United States Court of Appeals for the Second Circuit

APPENDIX

77-1150

B P/S

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 77-1150

UNITED STATES OF AMERICA,
Appellee,

—v.—

AMREP CORPORATION, RIO RANCHO ESTATES, INC., ATC REALTY CORPORATION, HOWARD W. FRIEDMAN, CHESTER CARITY, HENRY L. HOFFMAN, and DANIEL FRIEDMAN,
Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX OF UNITED STATES OF AMERICA AND ALL DEFENDANTS

Volume II—Pages A-681 to A-1360

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attribution has to do with acts and does not have to do with something coming from that individual.

THE COURT: Upon which the scheme is formulated.

MR. ARKIN: If your Honor please, if the scheme was formulated based upon certain knowledge which was not in the possession of the other alleged co-schemer, that other alleged co-schemer would not be guilty of the scheme and that's the very point. You cannot get him over the hump into the pot if he doesn't have that knowledge.

(Continued on next page.)

THE COURT: If it is shown that a person joined the scheme knowing that the scheme was to make false representations regarding the future of the land in Rio Rancho and he knew some of them but not all of them, he is in.

MR. ARKIN: Your Honor, may I read --

THE COURT: Whether he knows the others or not.

MR. ARKIN: Your Honor, may I read to you very briefly a Second Circuit --

THE COURT: I have ruled, you have your record. You have your record, Mr. Arkin. I have read brief after brief, case after case, I have made my ruling.

I indicated to Mr. Glendon yesterday what my ruling is. We are going through the same stuff again today.

I allowed him to submit some cases to me and I said I would read them. This is the end of this point, Mr. Arkin. Let's go on to No. 47.

MR. ARKIN: No. 47 is again -- we just spoke about that. That is an AIDS, a chamber --

THE COURT: This 47 that I have in my hand is out.

MR. ARKIN: Thank you, your Honor.

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No. 48 is again an AIDS document, Albuquerque Industrial Development Servicing and the Industrial Foundation of Albuquerque, Inc., known as IFA --

THE COURT: Is that the same as 47, Mr. Kaufman, the same organization?

MR. KAUFMAN: It is the same organization, your Honor, but it also includes a letter signed by a research analysis at AIDS to Mr. Jessie Levy, staff writer, Rio Rancho Estates, New Mexico.

THE COURT: Let me see.

THE COURT: Who is Jessie Levy? Is he in your employ, Mr. Arkin?

MR. ARKIN: I am informed he was a part-time employee for the monthly newspaper that Rio Rancho called the Roadrunner.

THE COURT: I will let 48 in.

MR. ARKIN: Your Honor, I take it this would not come in for the truth of it.

THE COURT: Of course not.

MR. ARKIN: Thank you.

THE COURT: We ruled on that two weeks ago, Mr. Arkin.

MR. ARKIN: I understand, your Honor.

THE COURT: 60.

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MR. KAUFMAN: I believe 60 is one of the reports issued by the Albuquerque Planning Department that you have already ruled on. This is the report issued by the Albuquerque Planning Department in February--

THE COURT: Can you prove that by certificate?

MR. KAUFMAN: We will prove it by live witness.

THE COURT: All right.

MR. KAUFMAN: We also again want to prove that it was in the company's possession. I gather we have covered that.

THE COURT: I gather there is no objection on the grounds of company possession to any of the exhibits in this paper.

MS. CROSS: Not once Ms. Dacey checks the few that we had a question of those over lunch.

THE COURT: Which are those?

MS. CROSS: We were going to check on Exhibit 93.

THE COURT: 93 is not in here.

MS. HYNES: 93 is a map that has already been stipulated to.

MS. CROSS: In the counts files there were certain exhibits which we did not know that the government had listed as exhibits so we had not checked them. They

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were new since the last exhibit list. They were 103-F, 104-F --

MS. HYNES: That is not correct.

MS. THOMPSON: Your Honor, maybe I can do it. The ones we didn't have designated were 130-O through Y --

THE COURT: Yes.

MS. THOMPSON: 131-O through P, these that I am giving you now are exhibits that we hadn't known were premarked by the government until we got the list.

THE COURT: Yes.

MS. THOMPSON: 136-H.

141-H and I.

143-J and K.

145-F.

146-J through M.

THE COURT: Yes.

MS. THOMPSON: 158-E.

Now, there are a group that we need to look at the government's exhibits just to verify whether or not we turned them over and that is a much longer list.

MR. ARKIN: Your Honor, may the defendants be excused?

THE COURT: Sure, they don't have to stay.

MS. THOMPSON: We need to look at 103-F --

THE COURT: Up to now, I gather, the numbers you have given me are numbers of exhibits which you say you are not ready to stipulate were produced from the corporation.

MS. THOMPSON: No, your Honor, the numbers that I just gave you are numbers that we had not known were exhibits at all. We had not been aware of the fact that there were proposed exhibits, for example, 130-Q through Y until we got this list yesterday so we haven't had an opportunity to look at the exhibits.

THE COURT: But my question is you are not ready to stipulate they come from the corporation?

MS. THOMPSON: Right.

THE COURT: You are passing 158-E.

MS. THOMPSON: We also have -- there are some others in that group of count file documents that we need to look at that we knew were intended to be exhibits, but we need to look at the government's in order to make sure they were produced by us.

THE COURT: Which are they?

MS. THOMPSON: 103-F.

104-F.

107-H.

112-B.

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THE COURT: They don't ask for 107-H. I am sorry, they do.

MS. THOMPSON: 112-B.

113-B.

116-A.

118-B and C.

119-A.

132-G.

133-C and R, S and T.

139-D.

THE COURT: I don't have any 139-D.

MS. THOMPSON: I am sorry, it is an A, I am sorry.

THE COURT: Go ahead.

MS. THOMPSON: 143-F, G and H.

145-C.

147-B.

152-C.

157-O and P.

160-C through E.

THE COURT: Yes.

MS. THOMPSON: 166-E.

169-H.

Then coming out of the count files: 206 --

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THE COURT: It is not listed.

MS. THOMPSON: Yes, it is, it is the Group 205 through 11-.

217, your Honor.

THE COURT: Sorry.

MS. THOMPSON: 206, 209, 226, 237, 244, 246, 254, 255, 260, 270, 275, 276, 279, 285, 303, 305, 308, 309, 310, 311 through 14.

THE COURT: Yes.

MS. THOMPSON: 318.

319 through 330.

THE COURT: There is a lot of stuff you didn't pick up.

MS. CROSS: There are a lot of these, your Honor, if we had a little time to check the government's file, we could probably agree on virtually all of these.

THE COURT: This I thought was done two weeks ago.

MS. CROSS: This list we got last night.

THE COURT: But these are the same numbers you had when you were served with the list on September 7th. So to say that by November 9th you still have not looked at them is a little disturbing to me.

You got from 319 to 330.

MS. THOMPSON: 331.

332 through 345.

354.

367.

THE COURT: A through B or just 367?

MS. THOMPSON: Just 367.

375.

377-A.

384.

385.

409-A.

THE COURT: Yes.

MS. THOMPSON: 491.

495-A.

497.

524 through 526.

528.

533.

THE COURT: I am sorry, after 526 what?

MS. THOMPSON: 528.

533.

545.

554.

558.

559.

I have three more to go. 572.

574 and 576.

THE COURT: All right. That takes care of the ones you haven't seen.

MS. THOMPSON: Correct.

THE COURT: Does that mean that you consent that all the others were found in the company produced records?

MS. THOMPSON: Yes, it does.

THE COURT: Now we are back to the ones as to authenticity which have been conceded to come from the company records but which the defendants claim are not authentic.

MR. ARKIN: What are we up to now, your Honor?

THE COURT: 60-A.

MR. KAUFMAN: That is part of 60, your Honor.

MR. ARKIN: We have the same objection there, your Honor, which is a tabulae rasae objection.

You have a live witness on this, is that correct, Mr. Kaufman?

MR. KAUFMAN: Yes.

60-A is part of 60.

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THE COURT: All right, he has a live witness.

THE COURT: 62.

MR. KAUFMAN: 62, your Honor, is a study called the Albuquerque Transportation Study Bulletin handwritten and as produced by the company says "Chester: I thought you might be interested in this."

MS. HYNES: Your Honor, the company has produced the original of that also.

THE COURT: Mr. Arkin.

MR. ARKIN: With respect to the fact"Chester I think you might be interested in this,"again there is no showing to my mind, we cannot agree, that Mr. Chester, whoever that may be, Chester Carity saw it.

MR. KAUFMAN: Mr. Arkin thought that study was authentic enough to cite that in the brief he submitted to our office arguing we shouldn't indict his clients.

MR. ARKIN: If your Honor please, I submitted a brief to Mr. Kaufman or Mr. Curran's office a year and some months ago in an attempt to persuade them not to indict. Obviously that didn't work. Apparently he thought he wasn't powerful enough then.

I don't think that means anything at all whether I cited it before. I think that is nonsense. We except to that.

THE COURT: Where was this found, do you know, in Mr. Carity's file or the general files?

MR. KAUFMAN: If I could see it.

(Pause

MR. KAUFMAN: Your Honor, this has a notation of 135 on it which refers to the grand jury exhibit number.

THE COURT: That doesn't help any.

MR. KAUFMAN: I believe that grand jury exhibit No. 135 was a response to a subpoena asking for statistical information that the company possessed in terms of their factual representations to customers.

I believe and Ms. Hynes can correct me if I am wrong, that all of the documents 135 were produced as part of or at least some of them were produced as part of the files of an employee by the name of McGuigan who was hired to research the accuracy of the claims that the company was making.

Mr. McGuigan, I believe, if called to testify would say --

THE COURT: He is listed as a witness, is he not?

MR. KAUFMAN: Yes.

THE COURT: Bring him in and let him testify

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to that.

MR. KAUFMAN: He will say that these documents--

THE COURT: All right, that is 62.

63.

He is going to have a live witness for you, Mr. Arkin.

MR. ARKIN: I understand. He just said that. If he has a live witness, that is another question.

THE COURT: 63.

MR. ARKIN: No. 63 is by a company called Fantus in Chicago. We made reference to that in one of the briefs I submitted to your Honor.

I think I said the only duty they had is to report their income taxes. They are a private company located in Chicago.

THE COURT: Let me see it.

Any indication they requested this, Mr. Kaufman?

MR. KAUFMAN: Requested it from the maker of the report?

THE COURT: From the maker.

MR. KAUFMAN: I don't believe so, your HOnor.

THE COURT: You cannot even tell who did this.

MR. KAUFMAN: We were eventually planning on substituting the complete report rather than just those excerpts.

THE COURT: This is just a private company's report?

Out.

MR. KAUFMAN: Your Honor, can I have a clarification with respect to these documents you are ruling out? What you are saying is that unless they are documents of an official body, the fact that we can show --

THE COURT: Mere incidental reports by banks, chambers of commerce, that sort of material, I would not let in to show any knowledge on the part of these defendants.

MR. KAUFMAN: If we can call a witness from the company who would testify which file these reports came from, in other words, if somebody can testify this came from Chester Carity's file.

THE COURT: You can take a live witness who is going to say this came from the file of an individual defendant, that is something else.

MR. KAUFMAN: Thank you, your Honor.

THE COURT: I would assume each individual defendant [illegible] least would be held knowledgeable of what is in his individual file, the files that he maintained.

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MR. ARKIN: If we confront that problem, I will address myself to it, your Honor.

THE COURT: All right, we are up to 66.

MR. KAUFMAN: 66 is the report of Harmon, O'Donnell & Henninger that was commissioned by the defendants.

THE COURT: No objection to that, is there?

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MR. ARKIN: There is the same objection I made before, your Honor, which is I believe the government has the burden of showing that it was brought to the attention of each individual and knowledge is not imputed. That is my objection.

THE COURT: Overruled. If this is a study that the corporation contracted for and received it is in.

MR. ARKIN: I think we are going to have a live witness on this anyway.

THE COURT: Then there is no point in objecting.

MR. ARKIN: I object unless they bring a live witness.

THE COURT: 70 to 72.

MR. KAUFMAN: Your Honor, 70 and 71 are films produced by the company.

THE COURT: Any objections to 70, 71 and 72, Mr. Arkin?

MR. ARKIN: We will not object to 70. I don't know what 71 is.

THE COURT: What is 71?

MR. KAUFMAN: 71 is a second reel of film. 70 is the one that's being played, your Honor.

THE COURT: What is 71?

MR. ARKIN: My colleagues tell me that is not bing offered.

MR. KAUFMAN: Only 70 is being offered, your Honor.

THE COURT: Why did you put it on the list for?

MR. KAUFMAN: We put a number of company produced documents on the list that we weren't planning on introducing in our direct case in the eventuality it became necessary on redirect or rebuttal we wanted to have stipulations on authenticity for everything rather than making it a two-stage process.

THE COURT: Go ahead. 72.

MR. ARKIN: Number 72 is a plat showing lands of Alameda Cattle Company.

MR. KAUFMAN: This is an attachment to one of the purchase contracts from which Rio Rancho bought its land.

THE COURT: Would somebody inform me on this before we go further. I have been using this index of exhibits prepared by the defendants and it jumps from 70 to 92. Why is that?

MR. LAWUER: I believe the index is based on the government's memorandum. Those numbers deleted on the government's memorandum on the exhibits were not put in that index given to you.

THE COURT: You mean that the government is not offering anything from 71 through 91?

MR. LAUER: That was the assumption.

THE COURT: Is that correct? Mr. Kaufman?

MS. HYNES: Mr. Kaufman was just stating to your Honor that we put on this list documents that we do not presently intend to offer in our case in chief but we would deal with the authenticity should we have to offer it on our redirect or rebuttal.

MR. ARKIN: I suggest on the redirect and rebuttal they have the burden of proving authenticy and let them prove it then if they are going to have a rebuttal case.

THE COURT: My objection is to your attitude, Mr. Arkin. You object to every single one of these. I can't believe that there is a valid objection to every single one of these. You have just stated let them prove it on their rebuttal. I am trying to get concessions from a competent lawyer that some of these are all right but you are telling me nothing is good and that's what I object to. I object to be sitting here for two hours going through this nonsense that competent lawyers should be able to agree upon and know they have no objection. But that's not your attitude in this case, Mr. Arkin.

From the very beginning your attitude is no, no, no, no, no. So we will go on, one by one.

MR. FLEMING: Judge, it bothers me. I always thought the government came in and they put a witness on the stand and showed him a document and said what is it --

THE COURT: Because it is unnecessary in a case that has 1500 documents or more coming in that counsel can't agree in advance without producing a live witness. The case is going to be long enough, Mr. Fleming.

MR. FLEMING: I agree with that.

THE COURT: Even in a criminal trial defendants can make some concessions.

MR. FLEMING: Some, but I think it's difficult. There are a lot of documents which I look at where we shouldn't have to make no concession at all. They find them in the file and they want to incriminate everybody in the case because they found them in the file. That's not proper.

THE COURT: We have gotten over that hump. They say they are relevant and important to their position. This is their point. If you want to object, fine. But I can't believe you have a valid objection to 1500 documents. There must be some in 1500 you say they are entitled to put in without putting a live witness on.

MR. FLEMING: What your Honor is asking is aren't there some of these documents in connection with which we will waive our Fifth Amendment rights, that's basically what the ruling amounts to.

THE COURT: No, it doesn't. Authenticity of a document? They can put a witness on the stand, could they not?

MR. FLEMING: I don't think they can.

THE COURT: Then say you object and say why but my objection is that Mr. Arkin has objected to everything that's come in so far, everything.

MR. FLEMING: All I am saying is that --

THE COURT: I don't think that's the way competent lawyers have to try a case and have their clients put upon.

MR. FLEMING: There are some memoranda that bear the caption Daniel Friedman to X or Y or Z which in fact were not prepared by Daniel Friedman. There are some memoranda captioned Chester Carity to X, Y and Z and which were made by other people who used his name. What I see here is the government went out and they went out and subpoenaed a lot --

THE COURT: Well, under the cases, Mr. Fleming, such a document would have come in as having enough inditia of authenticity to allow it in.

MR. FLEMING: Perhaps it would.

THE COURT: Let's go through it then and I will stay here and tomorrow we will stay here. This should have been done before trial, that's my point and I thought when you said you would sit down and work out some of these because I said I didn't want to sit any more going through this one by one by one that this was what was being done.

I find out now in the middle of trial it has not been done. So let's do it now because I am not going through this with the jury sitting here. You can do ten here or fifty here to the time it would take you to do one during the trial. That's all I am doing.

MR. FLEMING: I agree with that. I only note it bothers me they can't come in here with witnesses to prove their case. Their whole attitude seems to be we subpoenaed them and everybody stipulates they are authentic and they come into evidence with no identification and the burden is on us.

THE COURT: I have no objection to your making a valid objection. I am saying from where I sit I can't believe that there must be an objection to every single document offered. That's all.

MR. FLEMING: I am not addressing my comments to your Honor. I understand your Honor's view. I went through a trial where we stipulated to authenticity as to something like 8,000 documents and the first time we got those documents a week before the trial started and the first time I saw or heard of one of those documents was in the government's rebuttal summation and that's a terrifying prospect.

THE COURT: But you have had these documents since September 7th, all of them.

MR. FLEMING: I understand that.

THE COURT: And it's now November 9th and you have had plenty of time to familiarize yourself with their contents.

MR. FLEMING: Your Honor, I am not going to get into the demands of practice. I understand your Honor's position perfectly. I am not taking objection to your Honor's position. I just want to get it off my chest, it annoys me professionally that they come in and say we subpoenaed this, they come from the corporation, what are we quarreling about?

THE COURT: We have gone over that an hour ago.

MR. FLEMING: There are burdens of proof here and they keep saying stipulate and I agree with Mr. Arkin.

THE COURT: But Mr. Arkin objects to everything.

MR. ARKIN: There are exceptions, Judge.

THE COURT: I haven't seen them yet.

73, 4, 5, 6, 7, 8, 9. I am asking you what your objection is. You have made the statement let them prove authenticity.

MR. ARKIN: We didn't look at these. My colleagues inform me with respect to documents which were not to be introduced on the case in chief those were not looked at by my colleagues. I am told by a portion of defense team they haven't looked at it, another portion they haven't looked at them carefully because they didn't come in on the case in chief so at this point I am not amply educated to make an objection to them.

THE COURT: So this takes you then through 91, right? From 73 to 91 I gather are rebuttal, right?

MR. ARKIN: That's what I understand.

THE COURT: Therefore, you have plenty of time before it's time for rebuttal to go over those. All right.

Let's go on to the next group. Let's say to be checked within the next month, how is that, Mr. Arkin?

MR. ARKIN: That sounds to me agreeable. Is it agreeable to everybody here? We have a democratic defense team, your Honor.

THE COURT: Great. We are now up to 92.

MR. FLEMING: Which is probably a mistake.

THE COURT: 92, which I gather is about 140 documents.

MR. KAUFMAN: These are documents the government is not planning on using on its direct case.

THE COURT: 92 you will not use in your direct case?

MR. KAUFMAN: Correct.

MR. ARKIN: Within the month, your HOnor.

THE COURT: How about 94?

MR. ARKIN: That is not in the direct case either.

MR. KAUFMAN: Same thing, your Honor.

THE COURT: 94-A.

MR. KAUFMAN: The same position, your Honor.

THE COURT: 99.

MR. KAUFMAN: These are minutes of the meetings of the board of directors of AMREP.

MS. HYNES: These will be used as a basis for making a chart which reflects members of the executive committee and they will not be offered in evidence as such. They will really form the basis for the government making a chart of corporate officers, directors and the executive committee.

MR. ARKIN: We were going to stipulate

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to a chart by the government provided the chart was fair and accurate.

THE COURT: So we are up to 100.

MR. KAUFMAN: The same thing.

THE COURT: A chart?

MR. KAUFMAN: Correct.

THE COURT: 101?

MS. THOMPSON: We admitted 101-A and B are business records.

THE COURT: All right.

MS. THOMPSON: 102-A through C are business records and 102, 103, A, B and C are authentic and F we object.

THE COURT: You object to C, D and E on authenticity grounds, is that correct?

MS. THOMPSON: C, D and E we admit are authentic and F we have to look at.

THE COURT: 103-A through E is okay but you want to check F?

MS. THOMPSON: Right.

THE COURT: Now you come to 104-A through E.

MS. THOMPSON: Same thing.

THE COURT: 105-A through G.

MS. THOMPSON: They are okay.

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THE COURT: 106-A through H?

MS. THOMPSON: Also admitted that they are authentic.

MR. ARKIN: Those are letters written by Maryann Newman and she was a low level employee at Rio Rancho Estates out in New Mexico and the government seeks to introduce those to bind everybody in the case.

I suggest to your Honor that can't be done.

THE COURT: Is she an agent of the corporation, and knows how to conduct the sales?

MS. HYNES: She was director of customer relations for Rio Rancho, your Honor.

MR. KAUFMAN: I believe we have gone over the Maryann Newman letters.

THE COURT: I said they came in.

MR. ARKIN: That would be as against the corporation, as I understand it.

THE COURT: But then they are going to get into the other problem, whether the president of the corporation doesn't know what his company is doing in the course of its business.

MR. ARKIN: Certainly a president of a corporation which has 2,000 employees does not know what every particular employee does.

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THE COURT: Not something from the person who signs as director of customer relations.

MR. ARKIN: A fancy title doesn't prove anything.

THE COURT: That is your problem and not mine. We are dealing with authenticity, Mr. Arkin.

Mr. Fleming is trying to talk to Mr. Arkin, I hear three people talking.

MR. ARKIN: Mr. Fleming, why don't you speak first and I will speak after and everybody else will shut up.

MR. FLEMING: My understanding is that we are engaged in a determination of authenticity.

THE COURT: That is the first go- round. The second go- round is relevance, right?

MR. FLEMING: Are we in that go- round now?

THE COURT: We are doing authenticity.

MR. FLEMING: The relevancy questions are are questions aside from what we are doing now?

THE COURT: We are doing authenticity now. The government pointed out that was Step 1 and I agree with them that that is Step 1.

Are we going on to 107 through J except H?

MS. THOMPSON: 197-A we have admitted is

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authentic.

B is a handwritten note and that has to be authenticated.

C we admit was authentic.

D we admit was authentic.

E we admit was authentic.

F we admit was authentic.

G we admit was authentic.

THE COURT: H you have to check.

MS. THOMPSON: Right.

THE COURT: I and J?

MS. THOMPSON: I we admit is authentic and J we admit is authentic.

THE COURT: So B is the one -- well, let me see B.

MS. THOMPSON: B I think has to wait for a witness.

THE COURT: Are you getting a witness on B, 107-B?

MR. KAUFMAN: Your Honor, there will be a witness on this and it is the customer's own letter which appears in the company's files.

THE COURT: All right. 108, madam.

MS. THOMPSON: 108-A is authentic.

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108-B, 108-C, 108-D, 108-E, 108-F, 108-G, 108-H, 108-I, 108-J, 108-K, 108-L are authentic.

THE COURT: All authentic?

MS. THOMPSON: Yes.

THE COURT: We are up to 109.

MS. THOMPSON: 109-A we admit is authentic, B we admit is authentic, C we admit is authentic.

THE COURT: They go only from D through H, Ms. Thompson.

MS. THOMPSON: D is authentic, E is authentic, F we admit is authentic. G we admit is authentic. H we admit is authentic.

THE COURT: May I suggest as we go along you merely tell me those you object to.

We are up to 110 series.

MS. THOMPSON: The only one we have a problem there is 110-F which needs a live witness, I believe.

MR. KAUFMAN: It's a letter to the customer from Ronald R. Tanner, Building Division of Rio Rancho.

MS. THOMPSON: I have to take a look at it.

THE COURT: Show it to Ms. Thompson.

MS. THOMPSON: That is fine.

THE COURT: Therefore all of 110 is in.

We go to 111.

MS. THOMPSON: They are all authentic.

THE COURT: 112. B you haven't seen yet, what about 112-A?

MS. THOMPSON: Authentic.

THE COURT: 113, A?

MS. THOMPSON: Thought authentic.

THE COURT: 114-A to D?

MS. THOMPSON: They are all authentic.

THE COURT: 115-A to D?

MS. THOMPSON: They are all all right.

THE COURT: 116-A?

MS. THOMPSON: That we haven't seen.

THE COURT: 118 except B and C, A and D?

MS. THOMPSON: A is all right.

THE COURT: B and C you haven't seen.

MS. THOMPSON: And D needs to be authenticated by a witness.

THE COURT: 118-D, Mr. Kaufman?

MS. THOMPSON: That apparently has a customer's handwriting on it and has to be authenticated.

THE COURT: All right.

MS. THOMPSON: 119-A we haven't seen. B, C and D are authentic.

THE COURT: Okay.

120-A to C.

MS. THOMPSON: A, B and C are fine.

THE COURT: 121-A to F.

MS. THOMPSON: They all appear to be authentic.

THE COURT: 122-A to C?

MS. THOMPSON: They are all authentic.

THE COURT: 123-A to I?

MS. THOMPSON: That one we decided was moot because those are Mrs. Henry's documents.

MR. KAUFMAN: We have done them.

THE COURT: 124-A to C?

MS. THOMPSON: Authentic.

THE COURT: 125-A to F?

MS. THOMPSON: There is a handwritten note on Exhibit 125-C that will have to be authenticated.

THE COURT: Where is that?

MS. HYNES: It comes from the company's microfiche. It has a "Please rush" notation at the top if that is what Ms. Thompson is referring to.

THE COURT: What is the problem on this?

MS. THOMPSON: We don't know who put the handwritten note on it.

THE COURT: "Please rush"?

MS. THOMPSON: That is right.

THE COURT: Is that important to this document?

MS. HYNES: Not to the government.

THE COURT: Excise the "Please rush".

126-A and B?

MS. THOMPSON: We need to look at 125-D and E because they are letters written to the company.

These have to be authenticated. One purports to be written by the Secretary of State to Jacobs, Persinger & Parker and it has some handwritten numbers and handwritten names on it.

The other is a letter from the Department of State to Rio Rancho.

THE COURT: What do you want authenticated?

MS. THOMPSON: That they were in fact written by the Department of State.

THE COURT: Objections to 125-D and E are overruled. There are some handwriting notations on it and they should be excised.

MR. KAUFMAN: They will be, your Honor.

THE COURT: All right. 126-A and B.

MS. THOMPSON: 126-A and B, we admit that they are authentic.

THE COURT: 127-A and B?

MS. THOMPSON: We admit they are authentic.

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THE COURT: 128-A, B and E.

MS. THOMPSON: No problem.

THE COURT: 130-E.

MS. THOMPSON: Wait a minute, I am sorry,
128-E is two documents and we do have an authenticity
problem with the second document.

THE COURT: Let me see.

MS. THOMPSON: It is a letter apparently
written by the customer and would have to be authenticated.
I think it is the second one, your Honor.

THE COURT: A letter to a Mr. Martinez
handwritten.

It comes in because your letter to them is
obviously an answer to that letter. That is sufficient
for authenticity.

130-E.

MS. THOMPSON: E is all right.

THE COURT: What about H through Y leaving
out Q, R, S, T, U, V, W, X, Y.

MS. THOMPSON: G, H, I, J, K, L, M, N, through
N. They are all right. We have to look at 130-O.

THE COURT: What about O through Y. Is it
O through Y rather than O through Y.

MS. THOMPSON: We did know 130-O was to be

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an exhibit, but I cannot tell here from the handwriting.

P is all right and Q through Y we wouldhave to look at.

THE COURT: O is the only one out up to Q.

MR. THOMPSON: Right.

THE COURT: What is wrong with 130-O?

MS. THOMPSON: There may not be anything wrong with it if I can look at it, your Honor.

THE COURT: Good. It is much easier to do business with you than with Mr. Arkin.

MS. THOMPSON: Now I have a problem for you, I can't read it. I am not sure why it is being offered.

THE COURT: I have problems reading it. I suggest the government type up its translation of this and show it to the defendants. If it is a proper translation, I will take it. That is O.

MS. THOMPSON: Yes.

THE COURT: 131-J through O -- J through N, I am sorry.

MS. THOMPSON: We do have to see N because it was apparently signed by the customer.

Your Honor, I do think this would have to be authenticated by the customer. This purports to be signed by the customer.

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THE COURT: Let me see it.

Yes, I would think that would be true. This goes to the guts of your case.

131-N is out of the concession.

132. You haven't seen G, what about the rest of them?

MS. THOMPSON: B and H through L -- they are all right, your Honor.

THE COURT: How about the 133 series except K, N, R, S and T.

MS. THOMPSON: A through F are all right, your Honor.

THE COURT: Then the rest you haven't seen, I gather, except P.

MS. THOMPSON: We also have to see P, your Honor.

THE COURT: All right.

134-A and B.

MS. THOMPSON: They are all right, your Honor.

THE COURT: 136-A.

MS. THOMPSON: I think there is no problem, your Honor, if we can see it.

THE COURT: Show 136-A to Ms. Thompson.

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MS. THOMPSON: Mr. Arkin reminds me that all of our agreements as to authenticity are with the exception of the handwriting put on by the government.

THE COURT: That is agreed to be excised before you show it to the jury.

All right, how about 137-A through F?

MS. THOMPSON: A through E are fine, your Honor,and if we take a look at F, we may be able to eliminate that problem.

This one we don't admit is authentic.

MR. DEVORKIN: Your Honor, I will hand it up.

THE COURT: Who is Bob Whalen?

MS. HYNES: Bob Whalen is the head of the administrative office at Albuquerque. He is the person who is in charge of all of the operations.

THE COURT: Is he going to testify?

MS. HYNES: He is not going to be called by the government.

THE COURT: What is the purpose of this? We are getting into relevance at this point.

MS. HYNES: Your Honor, I haven't been able to look at the document. There will be testimony as to who Mr. Whalen is and what his position is.

THE COURT: That does not answer the question.

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MS. HYNES: Your Honor, this shows Mr. Carity's involvement in customer transactions. It says that Mr. Carity's okay was given on trading in a half acre and it shows Mr. Carity's involvement and that Mr. Carity -- you have to get Mr. Carity's okay. It is a business record of the corporation.

THE COURT: That doesn't prove that you have to get Mr. Carity's okay. It says that Mr. Carity gave an okay to settle something for $179.

MS. HYNES: I agree with that, your Honor, and it is for that reason that we would offer it to show Mr. Carity's involvement in the sales transactions and in the details of the sales transactions.

THE COURT: Is that the only one you have got out of all of these thousands upon thousands of pages? This is the only thing you have?

MS. HYNES: This deals with a count, your Honor.

THE COURT: I understand that.

MS. HYNES: There may be others, your Honor, I haven't made a search.

THE COURT: What is it being shown for on the count. That he okayed a $179 reduction in settlement. How does that relate to the count?

MS. HYNES: Your Honor, Mr. Carity is an officer of ATC, I think he is president of ATC. The memo reads: As you recall we have Chester Carity's okay to honor the ATC offer to Fague, who is a count person, to give the one half acre upon payment of $179.

Her telephone conversation with ATC, Peter Mill , and Mrs. Henry has testified that Mr. Miller was the vice-president of ATC, Peter Miller asked the HSO, that is what is called a homesite owner, if lump sum was forthcoming so we could make up the papers.

It goes on to say: I understand Mr. Miller is in Albuquerque with his tour and will be coming to see us about the matter.

Basically it shows Mr. Carity's involvement in the sales transactions and in the everyday details of the sales.

THE COURT: That is the only thing you have got against Mr. Carity, to show Mr. Carity's involvement?

MS. HYNES: No, your Honor, not at all.

THE COURT: As of now it is out. I cannot see it coming in.

MS. HYNES: The problem with this is -- and you say is that the only thing you have and we say no and you rule that out and there is an accumulation of documents

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that will show Mr. Carity's involvement. It is important that Mr. Carity who was president of ATC gets down to the nitty-gritty to the extent that he okays a half acre exchange or a cutback with a customer.

THE COURT: You are going to have to show me and you have got plenty of time to do it in the next couple of days what other proof you have of Carity aside from that. I will not let it in now.

MS. HYNES: We are not offering it now, your Honor. We are really dealing with authenticity now.

THE COURT: I am telling you it is out, too, now until you show me whether you have other material in addition to this to show a course of conduct but, one, the answer is no.

MS. HYNES: I understand your Honor's ruling.

THE COURT: Next.

MS. THOMPSON: 138-A and B.

139-A we need to see.

THE COURT: You haven't seen A and 139?

At least you told me you didn't.

MS. THOMPSON: It needs to be authenticated. It is a letter apparently written by the customer to the bank.

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THE COURT: Who is Thorne?

MR. DEVORKIN: He is a count purchaser.

THE COURT: What does this one prove?

MS. HYNES: I don't know what the date is, your Honor.

THE COURT: A letter to the bank, dated August 29th -- well, the bank's stamp is August 29, 1972, saying that Mr. Thorne has died and they want an affirmance that the account has been paid in full and what the balance is on the other account.

I will let it in, 139-A.

140-A to C.

MS. THOMPSON: Your Honor, we need to see 140-A. It is an envelope.

MR. DEVORKIN: It is the copy of the front of an envelope.

MS. THOMPSON: No, your Honor, that would have to be authenticated.

THE COURT: What is it?

MS. THOMPSON: An envelope with the return address filled out.

THE COURT: Is this the man who is going to prove the count?

MS. HYNES: I don't know, your Honor.

MR. DEVORKIN: It is the mailing return envelope customers use to send their payments to the Chemical Bank.

THE COURT: Is this the one to prove the count?

MR. DEVORKIN: I will check that. I am just checking the date on it.

MS. HYNES: Your Honor, I believe that this may, in fact, be the count mailing. It is a copy from the company's microfiche of the envelope that has been postmarked. The date is August 2nd and I cannot read the year although when you look at the microfiche on the viewer you can see the year.

I believe it is the date in the indictment.

THE COURT: I gather there is an entry in the company's books showing the receipt on that date or within a couple of days thereof of payment?

MS. THOMPSON: I don't know, your HOnor.

THE COURT: The existence of an account with such a person, the books reflecting a payment on or about the date of the envleope, an envelope addressed to it.

On the form used by the company to have the payments made to the bank would let it in.

MR. ARKIN: Many payments were made by hand,

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your Honor.

THE COURT: Yes, but this is proof that it was made by mail on your form that you provided your customers with from a person whose name is a count with you and the only thing left to do is to show that your books had a credit on or about that day. That can be done, it is authentic.

MR. ARKIN: May I see that, please?

I take it that Mr. Clymer is going to be a witness?

MS. HYNES: Your Honor --

THE COURT: He is asking you a question. Answer it.

MS. HYNES: I don't know at thie time whether he will be. If he is not a witness, this is proof of the mailing.

THE COURT: That is the only question you were asked. Is he going to be a witness and you don't know.

MR. ARKIN: If they have twenty count witnesses or they have twenty-three, whatever they are going to have, depending upon your Honor's ruling, it seems to me the way to authenticate this would have to be the person who is the alleged victim saying yes, I mailed this or didn't mail this or what have you.

THE COURT: You don't have to. Under the rules of the Circuit if there are sufficient indicia to show the authenticity, that takes care of it.

The only thing -- I assume that person is a customer, they used an envelope which you furnished, the only thing left is do the books of the ocmpany show a credit to that account on or about that day.

If it does, the envelope comes in.

MR. ARKIN: I say to your Honor --

THE COURT: It comes in on authenticity. There may be other problems.

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MR. ARKIN: There may be other problems, I agree with your Honor.

The only thing here is that it has handwriting in the upper right-hand corner, the return address.

THE COURT: That identifies the name of the customer. That's what gives it the authenticity. If you tie that up with the entry in the books of a receipt on or about that day of a payment that would have come in in that type of an envelope from that customer, it is sufficient.

MR. ARKIN: Your Honor, we just don't know who wrote that particular thing.

THE COURT: Let's take a look at your books. They have your books. It's simple. If there's an entry for that customer on or about that day, at lteas that day or later, it will come in.

MR. ARKIN: I think we can deal with the next exhibit then, your Honor.

THE COURT: We are up to what now?

MS. THOMPSON: Have we done 140-B and C?

THE COURT: As far as I am concerned they are in unless you have an objection.

MS. THOMPSON: No, not to authenticity.

THE COURT: 141 except H and I. D, E and G.

MS. THOMPSON: Your Honor, we would have to look at B, F and G has a number of documents in it including some that apparently were written by the customer.

MR. DEVORKIN: My G only has one document, your Honor.

THE COURT: Show it to Ms. Thompson.

MR. DEVORKIN: It may have become separated.

MR. ARKIN: Your Honor, with respect to D, that's a letter purportedly by Daniel Monaco who was a terminated employee of a subsidiary of the corporation. I understand he is going to be a witness anyway.

THE COURT: Will he be a witness, Ms. Hynes?

MS. HYNES: Yes, he will be. This letter was in 1974 when he was employed.

THE COURT: If you have a witness, that takes care of D.

What about E?

MS. THOMPSON: E is all right. F we are waiting to see from the government and G needs to be authenticated by the witness.

MR. ARKIN: G is a receipt.

MS. THOMPSON: Your Honor, G is an acknowledgement of the receipt of the federal property report and you said with regard to a previous customer that the customer would have to authenticate it.

THE COURT: It goes to the guts of the case.

MR. DEVORKIN: F is an original letter from Mr. Miller on behalf of I think ATC to the customer.

MR. ARKIN: Your Honor, with respect to F, this is a letter which purports to be from Peter Miller of ATC Realty to a Miss Lilian Sater. It is an original of the letter and I don't believe it was from our files and, in addition, it was written by an individual who is not here. I inform the court he is deceased.

We would object to it on authentication basis.

THE COURT: Was a copy produced pursuant to a grand jury subpoena?

MR. ARKIN: No, sir. No, it was not.

THE COURT: Where did you get this from?

MS. HYNES: From the customer, your Honor.

THE COURT: This is L under the list of company produced documents.

MS. THOMPSON: Your Honor, I am sorry, it is not on the list. We were reading from the wrong list.

THE COURT: This is 141-F.

MS. THOMPSON: It is not on the list.

THE COURT: Give it back. H and I you haven't seen.

MS. THOMPSON: Right.

THE COURT: What about G?

MS. THOMPSON: G is the one I just showed to your Honor, the acceptance of the federal property report and needs to be authenticated.

THE COURT: All right, we go to 143-B, D and E. The rest you haven't seen.

MR. DEVORKIN: B, your Honor, is the copy of the front of another envelope addressed to Rio Rancho at the Church Street Post Office box.

THE COURT: You have the same problem there.

MS. THOMPSON: Yes, your Honor.

THE COURT: Is that supposed -- is that a Chemical Bank?

MR. DEVORKIN: It is to Rio Rancho, Church Street Post Office. It is a count mailing.

THE COURT: You should be able to look at the books and if it is there, it is in.

MS. HYNES: We don't have the defendant's books to show each notation of payment.

THE COURT: You didn't see them?

MS. HYNES: No, your Honor, what we received when we asked for the customer files and payment records were computer printouts of the date of the last payment, but not the date of each payment.

THE COURT: I think the defendants can check their books and give us that.

MS. THOMPSON: 143-D we believe is authentic.

E we admit is authentic.

F is a letter which apparently was written --

THE COURT: You haven't seen the rest according to my notes. F, G, H, J and K you say you haven't seen. Right?

MS. THOMPSON: You are right, your Honor.

THE COURT: Okay. 145-A, you haven't seen the other two, A and B.

MS. THOMPSON: No problem. They are authentic.

THE COURT: All right, 146-A to I, you haven't seen the rest.

MS. THOMPSON: A I would like to take a quick look at, your Honor. IT is authentic.

B is authentic.

C and D, E, F, are all right. G I would like to take a quick look at. G is all right. H is all right. I is all right.

THE COURT: 147 omitting B, A through F omitting B.

MS. THOMPSON: A is all right, C is all right, eojb 6

D is all right, E is all right, F, G --

THE COURT: It only goes through F.

MR. THOMPSON: You are right, F.

THE COURT: 149-B, H, J to O, S to V.

MS. THOMPSON: B is all right.

THE COURT: I thought you were just going to tell me what was not all right.

MS. THOMPSON: I am sorry, all right.

H is not all right, it is a letter written by the count customer.

THE COURT: Let me see it.

MR. DEVORKIN: Your Honor, is there a date on that?

THE COURT: April 30, 1970 is the date on the letter. Received May 4, 1970.

The answer is attached to it.

I will let it in. There is a letter from the company answering it addressed to the client or the purchaser. H is in.

MS. THOMPSON: May I see J for a minute?

MR. DEVORKIN: You have a little trouble finding J. Maybe I can show it to Ms. Thompson later on.

THE COURT: He said he is having trouble finding J.

MS. THOMPSON: We can't comment on it until we see it.

THE COURT: Okay.

MS. THOMPSON: Everything else was authentic.

THE COURT: J is open.

MS. THOMPSON: Yes.

THE COURT: 150-A to D.

MS. THOMPSON: If I can just confirm that 150-D is from our file.

MR. DEVORKIN: We are having a little trouble locating that, your Honor.

THE COURT: All right.

MR. DEVORKIN: Perhaps we can move on to the next one and we will try to locate that.

THE COURT: All right.

MR. DEVORKIN: We have 150 now, your Honor.

MS. THOMPSON: There is no problem with A through D.

THE COURT: All right.

MS. THOMPSON: 151-A and B are all right.

THE COURT: 152.

MS. THOMPSON: B and C we have a problem with.

THE COURT: C you say you haven't seen?

MS. THOMPSON: I have an index definition of it and on the basis of that I would have to take a look at it.

Both B and C need to be authenticated by the customer. B is a representation by the customer is or is not going to be used as a principal residence.

MR. DEVORKIN: I think there is going to be testimony that customers were asked to send those in and I think there is a date received stamp from Rio Rancho on it.

THE COURT: But if this is going to be a customer count, I don't think that a document of this type can come in without authentication of signature. It is too important in the case to put in as just a purchase business record. This goes to the guts of the government's case.

How do you know these people signed it?

MR. DEVORKIN: I don't, your Honor.

THE COURT: Of course not. So 152-B --

MR. DEVORKIN: The only thing is that the company did keep that document in that customer's file and treated it as if they had sent it.

THE COURT: I don't know that. It is in the file period.

MR. DEVORKIN: I am saying there will be testimony to that effect and in effect they relied on that and put it in that customer's file for that purpose.

THE COURT: Someone else may have signed it.

That's a representation by the customer which you are going to rely on.

MR. DEVORKIN: I am just saying that the company treated it as if the customer had told them that.

THE COURT: Now they are raising the question of authenticity. That's what we have been discussing the whole day. I sustain the objection.

In other words, I won't allow a defendant to be convicted on that piece of paper.

MR. DEVORKIN: Okay.

MS. THOMPSON: 152-C also needs to be authenticated technically because the signature apparently was crossed out and signed by someone else.

THE COURT: This is the same customer, isn't it?

MR. DEVORKIN: Yes.

MS. THOMPSON: Yes.

THE COURT: Same ruling.

MS. THOMPSON: That takes care of 152.

154.

THE COURT: I gather you have no objection to C.

MS. THOMPSON: No, C we have admitted as a business record.

A and B we do have a problem with.

THE COURT: Let me see them.

MS. THOMPSON: B is a record of the property visitations.

THE COURT: I can't even make this out. Is that supposed to be a signature?

MR. DEVORKIN: May I see it, your Honor?

THE COURT: 154-B.

MR. DEVORKIN: It is supposed to be a signature. It is pretty faint, I admit.

THE COURT: It isn't pretty faint, it is nothing.

MR. DEVORKIN: IT may be that the microfiche will produce a better one.

THE COURT: I will keep it out for the time being. I will let A in, that's your letter. What is your objection to A?

MS. THOMPSON: Maybe I didn't understand what it is.

THE COURT: A is your letter on Rio Rancho letterhead to Mr. Paterno.

B is out for the time being.

155-A I gather you have no objection.

MS. THOMPSON: No.

THE COURT: 156-A and B.

MS. THOMPSON: No objection.

THE COURT: 157, a whole string of them.

MS. THOMPSON: D we have no objection to.

THE COURT: Just let me know which ones you object to.

MS. THOMPSON: Your Honor, if we can see O, P, S.

THE COURT: You haven't seen them?

MS. THOMPSON: We haven't seen O and P.

THE COURT: The rest is in?

MS. THOMPSON: I have a question about S.

THE COURT: Show her S.

MS. THOMPSON: S needs to be authenticated. It is a handwritten letter followed with a handwritten notation.

THE COURT: It looks like two different handwritings, too.

MS. THOMPSON: Yes.

THE COURT: I don't see how this comes in.

MR. DEVORKIN: O and P are typed letters from Mr. Wagner and signed by him to the company. I think his signature will be comparable to the signature that appears on the contracts.

MS. THOMPSON: We have never seen those.

(Continued on next page.)

T6A.PM

jgjb 1

THE COURT: Let me see them now.

This is not what I am asking for. I am asking back for what I just gave you, Z.

The only trouble is that the handwritten one is Mrs. Wagner and the others are Mr. Wagner.

MR. DEVORKIN: I meant the signatures of both of them are in the contract.

THE COURT: Why did you give me these two? That's signed only by Mr. Wagner and the handwritten letter is signed by Mrs. Wagner.

MR. DEVORKIN: The signatures of both Mr. and Mrs. Wagner are in the contract.

THE COURT: Give me the document that you want me to compare with 157-B.

I will let it in. Besides, there is a note from your people at the bottom of it. It says pep up say -- I can't make out the third word. It could be investment.

MS. THOMPSON: It can't be.

MR. DEVORKIN: On O there is a document which hasn't been marked as an exhibit but which is Rio Rancho Estates responding letter to O. I think that authenticates O.

THE COURT: He would like to see it.

MR. DEVORKIN: This is O with the responding letter. I think the signature is on the contract.

THE COURT: We are over the signature. Ms. Thompson says she never saw A and B. That was the list she gave originally.

MS. THOMPSON: We can't admit that O is authentic. It's a letter written by the customer.

MR. DEVORKIN: Here is the actual marked exhibit which responds to O, it's N. It's the original of which you have there.

THE COURT: Here is your original answer.

MS. THOMPSON: Your Honor, unless the answer is authenticated we are not admitting that the answer is authentic. The first letter is not authentic. This does not come out of our microfiche. Apparently it was produced by the customer.

MR. DEVORKIN: It's on their letterhead, your Honor.

THE COURT: I think I will let them in.

At this point we will suspend until tomorrow morning. I am going to continue to take testimony. I suggest counsel make arrangements to stay here tonight and finish up the rest of it. It's perfectly obvious you don't need me to go through the hundreds of documents I have gone through so far to hear Ms. Thompson say they are okay.

MR. ARKIN: Those documents to which we have some disagreement on however mild your Honor will rule upon at some other points?

THE COURT: I will rule on them tomorrow during a recess. I have gone through several hundred documents so far. All I hear Ms. Thompson say is okay, okay, okay. I don't hve to sit here to hear okay. I think she and Ms. Hynes and Mr. Devorkin can sit here from 5:00 on. It's now five after five and do the same thing. What is ever open I will pass upon. That is the thing I hope you would have done two weeks ago.

MR. FLEMING: If your Honor please, so that we all know what we are agreeing upon, we are agreeing upon authenticity which means the government did not forge the document essentially.

(Continued on next page.)

THE COURT: The next question is relevance.

MR. FLEMING: Which is not being determined until offered?

THE COURT: That is right. You may spend time in advance doing that. I don't see why I have to go through hundreds of those one by one in the presence of the jury.

There is a letter here on business records regarding some of these same exhibits which go from 101 through 170. You have seen that, I assume.

MR. FLEMING: That is why the witness gets on the stand, we have only had two witnesses, they say I received a document.

What can I do to keep that out of evidence? That is how I have always practiced. I don't see where we are going to have a lot of objections if they have a witness on the stand who says I received this document, I made this document, he gave me this document.

MR. HOFFINGER: Especially now we are going over seventy counts and only twenty will come in. A lot less will come in than what we are debating.

THE COURT: The Court of Appeals says they can introduce proof on the others to show the scheme.

MR. FLEMING: Most of the time you put a

witness on the stand and there is no objection and the witness says it's A and Z and what can I say but cross examine?

The only thing I would like to reserve on is against who it is admissible.

THE COURT: That is Number One. The second objection it is not relevant to any scheme and the fact the person signed a contract does not mean he was defrauded.

MR. FLEMING: I agree with you, your Honor.

THE COURT: Unless there is some basis to show that person was defrauded the documents don't come in.

The mere fact they are business records does not mean they come in.

MR. FLEMING: I agree with that.

THE COURT: I assume the government understands what they have to prove.

MR. ARKIN: I don't believe the Court of Appeals said they can introduce evidence with respect to the seventy counts. They indicated they would have the right to select. They would not be bound in.

THE COURT: They went further than that in the footnote and that was, and I agree with them because I am on record saying that that did not preclude them.

What I object to in that phase of the twenty counts is that nobody ever told me in this courtroom that they would be willing to go to the jury on twenty counts. That concession for the first time is made in the Court of Appeals and not in this courtroom. Never in this courtroom did the government ever say we are willing to go on twenty counts but let us pick them.

MS. HYNES: That is not correct, your Honor.

THE COURT: That is correct.

We are adjourned until tomorrow.

(Trial adjourned to November 10, 1976 at 10:00 o'clock a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Helen Henry (Resumed)		373	480	
Theodore R. Schreier	498			

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UNITED STATES OF AMERICA

v. 76 Cr. 644

AMREP CORPORATION, et al

November 10, 1976
10:00 A.M.

Trial Resumed

(In the robing room with Mr. Arkin, Defendant Blum and Ms. Hynes)

THE COURT: Mr. Blum, neither Mr. Hoffinger or his associate are here. It is ten after ten. Court is supposed to start at ten o'clock. Everybody else is here.

I understand you are willing to have Mr. Arkin cover for Mr. Hoffinger until he arrives, is that correct?

DEFENDANT BLUM: Yes, sir.

THE COURT: You accept that assigment?

MR. ARKIN: Yes, sir, I do.

THE COURT: All right, we will proceed.

(In open court - jury present)

MS. HYNES: Your Honor, at this time we will offer Government Exhibit 4-A into evidence, the cover page,

page 3, page 11 and the signature page.

MR. ARKIN: No objection, your Honor.

THE COURT: The cover page and what else?

MS. HYNES: Page 3, page 11, the signature page and the cover page together with the certification.

Let me correct the record, the record is 400-A.

(Government's Exhibit 400-A received in evidence)

xxxx

(Pause)

MS. HYNES: Your Honor, with your permission I will read portions from that exhibit.

THE COURT: All right.

(Ms. Hynes read from Government's Exhibit 400-A in evidence to the jury)

MS. HYNES: The government will offer into evidence Government Exhibit 400-B and will offer the certification page, the cover page, page 13, page 14, page 15 and the signature page.

THE CLERK: Any objections?

MS. CROSS: Your Honor has already ruled on this, I believe.

(Government Exhibit 400-B received in evidence)

xxx

MS. HYNES: Your Honor, may I read from this exhibit.

(Ms. Hynes read from Government's Exhibit 400-B in evidence to the jury)

MS. HYNES: The government will offer in evidence Government Exhibit 395, the certification page, the cover page, page 2, page 16 and the signature page.

(Government Exhibit 395 received in evidence)

xxx

MS. HYNES: Your Honor, may I read from this document?

THE COURT: Yes.

(Ms. Hynes read from Government Exhibit 395 in evidence to the jury)

MS. HYNES: The government offers Government Exhibit 402 in evidence, the certification page, the cover page, page 13, page 19, page 23 and the signature page.

MS. CROSS: Again, as with all of these, your Honor has ruled on them.

(Government Exhibit 402 received in evidence)

Xxx

MS. HYNES: May I read from this, your Honor?

THE COURT: Yes.

(Ms. Hynes read from Government Exhibit

402 in evidence to the jury)

MS. HYNES: The government offers in evidence Exhibit 409-A, the cover page, pages 8, 9 and the signature page.

MS. CROSS: Your Honor has already ruled on this.

(Government Exhibit 409-A received in evidence)

MS. HYNES: May I read from this, your Honor?

THE COURT: Yes.

(Ms. Hynes read from Government Exhibit 409-A in evidence to the jury)

T2A.AM

MS. HYNES: The government offers as Exhibit 410 the following pages, a certification page, the cover page, page 8, and the signature page.

The government will also offer page 2 of Exhibit 410.

MS. CROSS: May I look at page 8?

MS. HYNES: Yes.

XXX (Government Exhibit 410 received in evidence.)

MS. HYNES: May I read from this, your Honor?

THE COURT: Go ahead.

(At this point Ms. Hynes read portions of Government Exhibit 410 in evidence to the jury.)

MS. HYNES: The statement that I have just read to you also appears in reports filed with the Securities and Exchange Commission on December 10, 1970, which is Government Exhibit 395 at page 7, and let me check, your Honor, if I offered page 7 of 395.

Let me at this time offer page 7 of Government Exhibit 395 where that statement appears. The same statement appears in a report filed with the Securities and Exchange Commission by AMREP Corporation on September 28, 1971, which is Government Exhibit 409-A at page 9, and I will also now offer page 9 of Government Exhibit 409-A. And the same statement appears in a report filed with the

Securities and Exchange Commission on September 28, 1972 which is Government Exhibit 402 at page 19 and the government will now offer page 19 of 402.

The government will offer Exhibit 415, the certification page, page 4 and the signature page.

THE COURT: What number is that?

MS. HYNES: 415, your Honor. At the same time I offer Government Exhibit 413, the certification page, the cover page, page 4, and the signature page.

MS. CROSS: I believe your Honor has ruled on that.

THE COURT: Yes.

XXX (Government Exhibits 413 and 415 received in evidence.)

MS. HYNES: May I read from these exhibits, your Honor?

THE COURT: Yes.

MS. HYNES: I will read page 4 of Government Exhibig 415 in evidence, your Honor.

(At this point Ms. Hynes read portions of Government Exhibits 513 and 415 in evidence to the jury.)

MS. HYNES: The same statement appears in Government Exhibit 413 at page 4 and that report which is filed with the Securities and Exchange Commission on July 20, 1975 is also signed by Howard Friedman.

Your Honor, I have completed reading from the reports.

THE COURT: All right.

Next witness.

MR. DEVORKIN: Before I call my next witness I am going to offer Government Exhibit 93.

XXX (Government Exhibit 93 received in evidence.)

MR. DEVORKIN: May I show it to the jury, your Honor?

THE COURT: You may.

MR. DEVORKIN: I will read off the units marked on it. Unit 1, unit 2, unit 3, unit 4, unit 5, unit 6, unit 7, unit 8, unit 9, unit 10, unit 11, unit 12, unit 13, Panorama Heights, unit 16, unit 17, unit 20, unit 21, unit 22, unit 23, unit 24, unit 25, unit 26.

The government calls Howard Mandel.

XXX HOWARD MANDEL, called as a witness by the government, being first duly sworn, testified as follows:

MR. DEVORKIN: May I proceed, your Honor?

THE COURT: Yes.

XXX DIRECT EXAMINATION

BY MR. DEVORKIN:

Q Mr. Mandel, how old are you?

A 40 years old.

Q How are you currently employed?

A I am self-employed.

Q Doing what?

A I own a restaurant lounge in Ft. Lauderdale, Florida.

Q How long have you been doing that kind of work?

A Approximately two years.

Q What did you do before that?

A Prior to that I was employed by Seneca Lake Estates in Florida.

Q In what capacity?

A Sales manager.

Q What kind of work was that?

A Land development.

Q Where was the land that you were selling?

A Central Florida, Lake Placid.

Q How long did you do that?

A I did that for approximately a year.

Q What did you do before that?

A I was employed by Lake Placid Holding Company, a land development company, vice president sales and marketing for approximately two years.

Q WDere was that land?

A Lake Placid, Florida.

Q What did you do before that?

A I worked for All American Realty in Hackensack, New Jersey, a land developer in the Pocono Mountains.

Q That's where the land was being sold?

A Yes, it was.

Q How long did you do that?

A Approximately a year.

Q What did you do before that?

A I worked for AMREP Corporation.

Q How long did you work for AMREP Corporation?

A Approximately seven years.

THE COURT: Let's have the dates. I have not been able to subtract the day's date where he is now.

When did you work for AMREP?

THE WITNESS: 1963 to 1970.

Q What is your educational background?

THE COURT: Wait. What did you do for AMREP in 1963 to 1970?

THE WITNESS: I started as production, advertising production coordinator and I was vice president of sales. I was vice president of marketing.

THE COURT: In that order?

THE WITNESS: Yes, sir.

THE COURT: Go ahead.

Q Mr. Mandel, what is your educational background?

A I am a college graduate.

Q When you came to work for AMREP in 1963, what business was it in?

A It was primarily mail order.

Q What was it selling mail order?

MR. ARKIN: Your Honor --

MR. DEVORKIN: I withdraw that question.

Q Was it selling land at that time?

A Yes.

Q It was selling some other products too?

A Yes.

(Continued on next page.)

Q Did you actually work for AMREP or were you working for a subsidiary of AMREP?

A I don't know if it was a subsidiary or not. It was a different corporation.

Q What was the name of the corporation?

A I was paid by H.C. Printing Corporation.

Q What corporation did you actually work for?

A H.C. Printing.

THE COURT: What days are you talking about?

MR. DEVORKIN: In 1963 when you first went to work.

A I worked for H.C. Printing Corporation.

Q Did you also work for Carity - Hoffman Associates?

A I was not paid by Carity - Hoffman Associates, no, sir.

Q Did you work for Carity - Hoffman Associates, Mr. Mandel?

A I might have done some work for them in conjunction with H.C. Printing.

Q Did you or didn't you work for Carity - Hoffman Associates?

THE COURT: Twice he said no. He may have done some work for them but he was paid by H.C. Printing

qjw 2 Mandel - direct

and paid by them.

MR. FLEMING: I object also on relevancy, your Honor.

Q Would you please describe the circumstances of your coming to work for AMREP Corporation?

THE COURT: Let's get this straight.

In 1963 you did not work for AMREP then, according to what you testified. You worked for H.C. Printing?

THE WITNESS: Yes.

THE COURT: When did you go to work for AMREP?

THE WITNESS: I don't recall the exact year but I was paid by Sales Research Corporation which I believe was a subsidiary of AMREP.

THE COURT: Starting when?

THE WITNESS: I don't recall the exact date.

THE COURT: Roughly.

THE WITNESS: I would think about 1966, '67, in that area.

Q Mr. Mandel, was the work that you were doing for H.C. Printing Corporation work for AMREP Corporation?

MR. ARKIN: Objection.

THE COURT: Overruled.

Q Was the work that was being done for H.C.

Printing Corporation by yourself being done for AMREP Corporation?

A It was primarily work for mail order. There was some work for Rio Rancho Estates.

Q Do you remember the name of the person who actually hired you?

A Joseph Gould.

Q Do you know who he worked for?

A H.C. Printing Corporation.

Q In the beginning who did you actually work for?

THE COURT: H.C. Printing Corporation.

Q The name of the person?

A Joseph Gould.

THE COURT: We have been through this enough times.

Q Did you have a title?

A No.

Q What were your responsibilities?

MR. FLEMING: Objection on the grounds of relevancy.

THE COURT: Sustained. Get him into AMREP, will you? I am trying to help you do that if you take the hint.

qjw 4 Mandel - direct

Q What was the business of H.C. Printing Corporation?

A H.C. Printing was a printing broker who ordered printing for items from different companies.

Q It was one of those companies AMREP or Rio Rancho?

A They did some work for Rio Rancho Estates, yes.

Q Did you do work for Rio Rancho Estates?

A In conjunction of following up some printed material, yes.

Q When did you actually become involved in the sale of land by AMREP or Rio Rancho Estates?

A I started to become involved in 1964 as a coordinator at the New York World's Fair.

Q Before you did that work did you do any direct mail work for Rio Rancho Estates?

A I was involved with some direct mailing, yes.

Q For Rio Rancho Estates?

A Yes, sir.

MR. FLEMING: Is this directly or subcontractor or agent or what?

THE COURT: He said he worked -- do you want to voir dire him? Go ahead.

MR. FLEMING: No, your Honor, I don't. I am sorry.

Q What was the nature of the direct mail work that you did for Rio Rancho Estates?

A For various independent brokers I was involved in doing some mailings for leads.

Q What kind of mailing?

A Lead producing mailings, a letter, business reply cards.

Q Who would you send those mailings to?

A To people in areas where there was a broker.

Q And the broker was working for whom?

A It was an independent broker working for Rio Rancho Estates.

Q What was the purpose of sending the mailings out?

A To get leads for the broker.

Q What was he supposed to do with the leads?

A He was supposed to follow them up and try to convert them into sales.

Q How was he supposed to do that?

MR. FLEMING: Objection on the grounds of competence.

THE COURT: Sustained.

Q Did you come to know what the broker did with these leads?

MR. FLEMING: Same objection.

THE COURT: Sustained.

Q Did you have any discussions with anybody whom you were working for concerning the use of the leads?

MR. FLEMING: He is not a defendant. Same objection.

THE COURT: Sustained.

Q Mr. Mandel, don't you know of your own personal knowledge that H.C. Printing Company was owned by AMREP Corporation?

MR. ARKIN: Objection.

THE COURT: Sustained. We have been through this four times and the witness refuses to give you the answer you want. You have interviewed him, you know his background. You should be able to put proper questions to him to get what you want.

Objection sustained.

MR. DEVORKIN: Could we approach the side bar on something?

THE COURT: No. I saw you talk to him out in the hall yesterday. You must have spoken to him before that.

MR. DEVORKIN: That is correct.

THE COURT: Go put your questions then.

Q Showing you what has been marked as Government Exhibit 475, do you recognize that?

A Yes, I do.

Q What is it?

A It is a letter that was used to produce leads, direct mail letter.

Q This was sent out by you, this kind of letter?

A Yes.

Q Were the brokers informed that this letter was being sent out?

A Yes, they were.

MR. DEVORKIN: I offer 475.

MR. FLEMING: I object on behalf of Carity and Friedman, no connection.

THE COURT: Let me see it.

I gather, Mr. Mandel, this Exhibit 475 was put on the paper and mailed out to prospective customers of Rio Rancho Estates, is that correct?

THE WITNESS: It was mailed out to people asking if they wanted information pertaining to Rio Rancho Estates, yes, sir.

THE COURT: And do you know who gave this order to have this sent out?

THE WITNESS: No, I do not.

THE COURT: I will take it subject to connection.

(Government Exhibit 475 received in evidence)

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MR. DEVORKIN: Your Honor, may I read this letter to the jury?

MR. FLEMING: I object to it.

THE COURT: Not until you get connection.

MR. DEVORKIN: I think one of the letters read in earlier this morning connects this letter, your Honor.

THE COURT: What?

MS. HYNES: Your Honor --

MR. GLENDON: Your Honor, I raise --

THE COURT: Wait a minute.

MS. HYNES: The Exhibit is 409-A, page 9. It talks about --

THE COURT: Wait. Don't tell me what it talks about. Show it to me and let me read it.

MR. FLEMING: 409 is a 1971 document.

MR. GLENDON: I was going to point out the subject exhibit was dated that date and I object for that reason.

(Pause)

THE COURT: It does not connect that document in its having come from these people.

BY MR. DEVORKIN:

Q Mr. Mandel, was this letter placed on any kind of stationery?

A I believe it was ATC Realty Corp.

Q It was placed on the stationery of ATC Realty Corp.?

A I believe so, to the best of my recollection.

Q The letter was then sent out by your office?

MR. ARKIN: Objection, your Honor. Leading.

THE COURT: Obviously.

Q Did you send this letter out?

A I personally, no.

THE COURT: I think we had better have a recess.

(Jury left the courtroom)

THE COURT: I suggest the recess be used by the government to learn how to ask questions and get the evidence in they are trying to get in.

MR. DEVORKIN: May I make a presentation to the Court outside the presence of the witness?

(Recess)

d t3a

(In open court - jury present.)

BY MR. DEVORKIN:

Q Mr. Mandel, what was ATC Realty?

A I believe ATC Realty was a broker for Rio Rancho Estates.

Q Was ATC Realty a client of H.C. Printing Company?

A I don't know that answer.

Q You stated before, I believe, that Government's Exhibit 475 was mailed out on ATC Realty letterhead?

A Yes.

Q Do you know where those letterheads came from?

A No, I do not.

Q Who gave them to you?

A Joseph Gould.

Q Did he ever tell you how he obtained them?

A No, he did not.

Q What was the address of H.C. Printing Company?

A 16 West 61st Street, New York City.

Q Which floor?

A I believe it was the ninth floor.

Q What was the address of AMREP Corporation?

A 16 West 61st Street.

Q Which floor were they on?

A I believe they were also on the ninth floor.

Q What was the address of ATC Realty Company?

A 16 West 61st Street

Q Which floor were they on?

A Tenth floor.

Q When letters such as 475 in evidence were sent out, was anything sent to accompany them?

A There was a business reply card.

Q What did the business reply card say, if anything?

A Just for the people to sign their name and to send it back.

Q Where was it sent back to?

MR. FLEMING: I object to the form of the question, your Honor.

THE COURT: What was the address on the card is what he means.

Q What was the return address on the cards?

A To my recollection sometimes it might have been to ATC and sometimes it could have been to Rio Rancho, I don't recall.

Q Did you have anything to do with the cards when they were returned to those offices?

A No, I did not.

Q Did Mr. Gould tell you anything about what happened to those cards?

A No, he did not.

MR. DEVORKIN: Your Honor, I am going to offer 475-A.

MR. ARKIN: We have no objection to this particular document, your Honor.

MR. FLEMING: No objection.

XXX (Government Exhibit 475-A received in evidence.)

THE COURT: Yes.

MR. DEVORKIN: I would like to renew my offer on connecting this for this reason --

MR. FLEMING: No.

MR. DEVORKIN: I will do it at the side bar.

(At the side bar.)

THE COURT: Yes.

MR. DEVORKIN: Your Honor, both 475-A and 475 are documents that were on the list that we were going over last night with your Honor. They are both documents produced by the company from their files.

When I first marked them and disclosed them to the defendants, they were stapled together because that's how they were produced and they were marked 475.

I decided before today I wasn't going to offer 475-A so I separated the cover letter out and chose just to offer the document now marked as 475.

The copy the defendants received initially was with all these documents together. I submit that that shows that these documents are authentic and they are connected to ATC Realty and to Chester Carity.

I believe also, your Honor, that No. 117 referred to in 475-A is referred to or numbered on 475.

THE COURT: This number here?

MR. DEVORKIN: Yes.

THE COURT: This came in to your possession with that No. 117 on it?

MR. DEVORKIN: Yes, it did.

THE COURT: Mr. Arkin.

MR. ARKIN: I notice it is in handwriting, if your Honor please.

THE COURT: Here is the letter.

MR. ARKIN: I see the letter. We have no objection to the letter.

THE COURT: He says now this is the tie-up with 475 because 475 has the 117 on it.

MR. DEVORKIN: They came into our possession stapled together.

THE COURT: We heard that.

MR. ARKIN: With respect to the penciled handwriting in the upper right-hand corner, I cannot attest that it was there at any particular time. I just don't know.

THE COURT: On the government's representation that they received it from you pursuant to a grand jury subpoena with 475 attached to 475-A and 475-A referring to 117, which number appears on the top of 475, I am letting it in.

MR. FLEMING: Judge, it would speed things up if they would stop taking documents apart.

(In open court.)

THE COURT: All right.

MR. FLEMING: We have our objection, your Honor.

THE COURT: Overruled.

MR. DEVORKIN: May I read 475 and 475-A received in evidence?

THE COURT: 475 was authenticated, was it not?

MR. DEVORKIN: I would like to read the signature.

MR. FLEMING: There is no signature, if your Honor please.

MR. DEVORKIN: The typed block.

(Mr. Devorkin read from Government Exhibit 475 in evidence to the jury.)

(Mr. Devorkin read from Government Exhibit 475-A in evidence to the jury.)

MR. FLEMING: If your Honor pleae, may we identify Mr. Soske as California counsel to the company, a lawyer.

THE COURT: I don't know.

MR. DEVORKIN: Ihave no objection to that, your Honor.

MR. FLEMING: Will the government agree that he is the lawyer for the company?

MR. DEVORKIN: Yes, I agree to that.

(Continued on next page.)

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EOjw 1 Mandel - direct

BY MR. DEVORKIN:

Q Mr. Mandel, how long did you work in connection with sending such mailings out?

MR. FLEMING: I object to the form of that question. It was not a mailing. It was a letter to a lawyer asking it be submitted for approval.

THE COURT: The witness has said this is the letter that went out to various people throughout the country in areas serviced by independent brokers seeking purchasers for Rio Rancho. That is his testimony.

Objection overruled.

Q Mr. Mandel, you can answer the question?

A Approximately a year.

Q Who chose the mailing lists to be used in conjunction with this letter?

A I don't know the individual in the company.

Q Did you have anything to do with that?

A Not initially, no.

Q Did there come a time when you did?

A There came a time when I handled mailings for dinner parties, yes.

Q Did there come a time when you transferred into another kind of work for the company you were working for?

A There came a time, yes, I got involved in 1964 coordinating the New York World's Fair.

Q For whom?

A I was still at that time paid by H.C. Printing.

THE COURT: What were your duties?

THE WITNESS: My duties were basically to make sure that the booth at the Better Living in the World's Fair was manned properly, had literature.

THE COURT: Whose booth was this?

THE WITNESS: This was the booth of Rio Rancho Estates.

Q Did you have any conversations with anybody before you transferred into that kind of work?

A At a given time I had spoken to Mr. Gould who suggested I might speak --

MR. FLEMING: Objection.

THE COURT: Sustained.

Q Do you know Chester Carity?

A Yes, I know Chester Carity.

Q Do you see him somewhere in this courtroom?

A Yes, I do.

Q Could you point him out, please?

A He is sitting (indicating).

THE COURT: Behind Ms. Cross to her right?

THE WITNESS: Next to the gentleman with the glasses.

THE COURT: All right.

MR. DEVORKIN: May the record reflect the witness has identified Mr. Carity?

THE COURT: Yes.

Q Did you have any conversations with Mr. Carity in conjunction with this?

A Yes, I asked Mr. Carity if there was possibly some area that I might be able to get into because what I was doing was not happy with and I felt that I had more ability and talent than what I was doing and I was looking to better myself.

Q Did you tell Mr. Carity what you were doing?

A I told him that I was working on mailings; that I was working under Mr. Gould to coordinate mailings and it was very boring and unsatisfying.

Q What, if anything, did Mr. Carity say?

A He said that he will think about it and he will see if there might be a position or he might know of something that might be better suited for me.

Q What, if anything, happened after that?

A After that I did get involved in the New York World's Fair.

Q Did you have a conversation with Mr. Carity about that?

A He told me to work under Mr. Arnold Mann, who was responsible for the New York World's Fair.

Q What was Mr. Carity's position at that time?

A I believe he was executive vice-president of AMREP.

Q How long did you spend working on the World's Fair for AMREP or Rio Rancho Estates?

A For the entire time that it was in existence.

Q Did you receive any training or orientation before you began that?

A Mr. Mann told me what was expected of me, what he wanted me to do.

Q What products were being sold at the World's Fair booth that you have described?

A It was Rio Rancho, the booth was Rio Rancho Estates.

Q Did you see Mr. Carity during that period of time?

A At the World's Fair?

Q When you were working on the World's Fair effort?

A Yes, I did run into him, yes.

Q How often would you see him?

A Well, when I was in the New York offices I would see him basically once a day.

Q Which New York office?

A When I went up to H.C. Printing to get material, printed material that I had to bring out to the New York World's Fair.

Q You saw Mr. Carity there?

A I saw Mr. Carity on that floor, yes.

Q Did you have conversations with him?

A Hello, how's everything going.

Q Did you talk to him about your work?

A No.

Q What was Mr. Mann's position at the time?

A I believe he was sales manager.

Q For whom?

A I believe it was ATC Realty, if I am not mistaken.

Q Besides the World's Fair booth, were you doing anything else in conjunction with Rio Rancho Estates at this time?

A I started to -- well, just after that --

THE COURT: Just after what?

THE WITNESS: After the World's Fair --

THE COURT: Wait, that was in 1965?

THE WITNESS: The World's Fair, I think it was from '64 to '65, if I am not mistaken.

THE COURT: So, therefore, you are now talking about 1965?

THE WITNESS: 1965 AMREP started a dinner party program.

Q Before that began, Mr. Mandel, while you were working at the New York World's Fair booth, were you doing anything else for Rio Rancho Estates?

A No, I was working still with H.C. Printing.

Q Do you recall something called a Hospitality Suite?

A That was in conjunction with the World's Fair.

Q Where was the Hospitality Suite?

A At the Holiday Inn on 57th Street.

Q What did you do there or how did it work?

A I didn't do anything there. People that registered at the World's Fair were shown a film if they wanted at the Holiday Inn, but I had nothing to do with that.

Q At the time the World's Fair booth ended, do you know how large Rio Rancho Estates was?

A I believe it was 55,000 acres.

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Q When did AMRFP begin selling those lots?

A I don't know.

Q Do you recall if it was in 1961?

A It might have been.

MR. FLEMING: He wasn't there, I object.

THE WITNESS: I was not with the company.

THE COURT: He said he doesn't know.

Q During this time when you were working on the mailings you have described, do you know who created the advertisements or the promotional material in conjunction with those mailings?

MR. FLEMING: Objection.

MR. ARKIN: Your Honor, objection.

THE COURT: Sustained.

Q Were there any materials that were used in conjunction with those mailings?

A Are you talking of the dinner party mailings?

Q No, before the dinner parties.

THE COURT: He is all the way back now to 1963 when you say you sent out Exhibit 475.

A I had nothing to do with sales or anything.

Q Mr. Mandel, I am going to show you what has been marked as 346-D for identification.

A Yes.

Q Do you recognize this?

A Yes, I have seen this piece.

Q What is it?

A It is a brochure, How To Live, Invest, Retire in the Southwest.

end take

Q When did you first see this?

A I believe I saw that in 1964.

Q Where?

A If I recall it was either at the World's Fair --

Q Or where else?

A It might have been in H.C. Printing where I might have picked it up.

Q Do you know how this booklet was used, if at all?

A At that time, no, I don't.

Q Did you use this booklet?

A I have never used that booklet, no.

Q Was this booklet distributed at all at the World's Fair?

MR. FLEMING: Objection.

THE COURT: Overruled. He was there.

MR. FLEMING: He said he had nothing to do with it.

THE COURT: He was there. He saw it.

THE WITNESS: The book was out on a counter, if I recall.

MR. DEVORKIN: I offer 346-D, your Honor.

MR. ARKIN: We have no objection, your Honor.

XXX (Government Exhibit 346-D received in evidence.)

Q Mr. Mandel, a little while ago you mentioned the word lead in connection with the mailing. Would you tell the jury what a lead is or what you understand a lead to be?

A What I understand a lead to be is when someone returns the business reply card or asks for additional information that's a lead.

Q What happens to the lead?

MR. ARKIN: Objection, your Honor.

THE COURT: If he knows he can tell us.

A Either material is sent to him or material can be delivered to the individual.

Q Do you know if that was done in connection with the Rio Rancho Estates?

THE COURT: Are you still in the period up to 1964?

MR. DEVORKIN: Yes, your Honor.

A At that time I was not involved with sales at all in those days.

Q That's not my question. My question is do you know --

THE COURT: He says he doesn't know. He wasn't involved at all. I gather there is some point in this man's relationship with AMREP where he did get involved so why don't you get to that unless there is something else that you think he was involved with during '63 and '64 and '65 at the end of the World's Fair. All he said was he took care of the booth at the World's Fair.

Q Did you ever have any conversations with anybody in connection with what happened to the leads for Rio Rancho Estates?

A No, I did not.

MR. ARKIN: Can we have a time, your Honor?

THE COURT: We are dealing, I thought we fixed the time, '63, '64 and '65 and the witness says he did not.

Q Are you familiar with the concept home site visits?

A Home site visits?

Q Home sit.

A Yes.

Q When did you first become familiar with that?

A I became familiar with that in 1965 after the World's Fair.

THE COURT: Let's stay prior to that date so the jury can keep clear in their minds what this witness is talking about.

Are you finished now?

MR. DEVORKIN: Yes.

THE COURT: We are now at the end of the World's Fair, Mr. Mandel.

What job did you get at the end of the World's Fair?

THE WITNESS: At the end of the World's Fair approximately around that time ATC Realty went into a dinner party program and I was involved in doing the mailings to invite the people to the dinner party. I was involved in coordinating with ATC Realty material that was needed.

Q How did you get those responsibilities?

A Actually some of them I took upon myself and as far as going to dinner parties initially.

Q Who gave you the position of dealing with those?

A I was working on the mailings, the dinner party mailings.

Q Who put you in charge of that?

A I believe at that time Joseph Gould put me in charge of that.

Q Did you have any conversations with Mr. Carity in connection with [illegible]

MR. FLEMING: Can you fix a time, if your Honor please?

MR. DEVORKIN: 1965.

MR. FLEMING: '65?

THE COURT: Yes, 1965.

A Yes, I did, because I got involved as far as showing him an invitation which I designed for the dinner party mail-out.

Q What did Mr. Carity do or say?

A I believe he liked it and told me to try it.

Q Who was choosing the mailing list at that time?

A I was.

Q How did you go about selecting mailing lists?

A It was predicated on the area where the dinner party was being held. What we would do is we would mail into a mile radius coupled with other information, such as length of time one lived in an area, such as affordability of individuals, and we mailed a certain quantity for each dinner party.

THE COURT: I am sorry, I don't understand affordability of individuals. What do you mean?

THE WITNESS: We try to keep it in an income level that was from 10 to $12,000 because we wanted to make sure that people attending the dinner parties could afford to purchase a piece of property.

Q What kind of materials did you send out in connection with the dinner parties?

A It was just an invitation inviting them to a dinner party to have dinner, to view a film.

Q Where were these dinner parties to be held?

A All over the city, the boroughs of Manhattan --

Q And who was running the dinner party?

A ATC Realty and the individual running it was Lou Koniecke and Bernard Stallsman.

Q Did you have any conversations with anyone concerning the initiation of the dinner party program?

A No, I did not.

Q Did anyone tell you how it got started?

A According --

MR. FLEMING: Objection.

THE COURT: Sustained.

Q Did anyone for ATC Realty inform you how it began?

A Lou Koniecke told me.

THE COURT: Who is Lou Koniecke?

THE WITNESS: He is the manager of ATC involved with the party program, the dinner party program for ATC.

Q What did Mr. Koniecke tell you?

MR. ARKIN: Objection.

MR. FLEMING: Objection.

THE COURT: Overruled.

Q You can answer the question.

MR. FLEMING: It's a hearsay objection, your Honor.

THE COURT: I understand it's a hearsay objection. He is a person, an employee of ATC here.

MR. FLEMING: This is offered only as against ATC.

THE COURT: I will take it as against everybody.

MR. FLEMING: We object.

A He said he had done this prior, he and his brother very successfully and he explained to me what they would need from me such as the mailings, the different areas, the various restaurants that they were going to be going out to, whatever areas I could help him. They asked me if I would please come to dinner parties at night to see what was going on so I would get a better understanding of what was happening which I did do.

Q Did he tell you who he worked for?

ATC Realty.

Q Did he tell you which individual he worked for?

A No, he did not.

Q Did he tell you who had approved the dinner party program for ATC?

A No, he did not.

MR. DEVORKIN: Can I approach the side bar?

THE COURT: You may.

(At the side bar.)

THE COURT: Yes. How about getting up here first and leave your retinue back so we can start the side bar.

MR. DEVORKIN: It's true I interviewed Mr. Mandel on two or three occasions. However, it is also true that in the middle of the last occasion which I believe is Sunday he refused to discuss matters involving this case with me any more.

It is further true that his testimony he is giving now is radically different than what he has told me before. The answers he has just given me are not the answers he has given me before in terms of who approved the program. I haven't expected the answers he has given me and on that basis I have to some extent have to be allowed to cross examine him.

THE COURT: If he gives you a flat no, what are you going to do?

MR. DEVORKIN: I would like to probe it a little bit. He has told me contrary things.

THE COURT: Give me an example of what you want to do.

MR. DEVORKIN: For example, he told me that he has had conversations with Chester Carity about these dinner party programs being approved and initiated. He told me that Lou Koniecke told him that Chester Carity approved the initiation of these dinner party programs.

THE COURT: What are you going to say to him?

MR. DEVORKIN: I want to probe a little.

THE COURT: How? Counsel wants to know.

MR. DEVORKIN: I want to ask him isn't it a fact of his own knowledge he knows that Mr. Carity was involved in the initiation or with the approval for AMREP.

THE COURT: I will let you ask that question.

MR. FLEMING: The only objection I have to that question is based upon what Mr. Devorkin said it would not be true of his own knowledge.

THE COURT: He got it from somebody with knowledge at ATC.

MR. LAUER: If the agent doesn't have personal knowledge it wouldn't be imputed.

THE COURT: Mr. Koniecke? What agent?

Wait a second, I am taking one lawyer. Mr. Fleming talks for your firm. This man says Koniecke of ATC, an officer or general manager of ATC, said it. It comes in. HE has described him as a man in charge of the New York operation. That lets it in.

MR. FLEMING: I think it's a broader point than the point we are discussing, your Honor, but the point is that if this were a civil case and there were some sort of apparent authority aspect to this then I could understand your Honor's ruling but it's a criminal case which requires evidence of mens rea and I don't think hearsay declarations prove anything at all particularly about a man like Koniecke.

THE COURT: I will let it in. You can ask him the leading question. On your representation that he is testifying directly opposite to what he told you when you were preparing him for trial I will let you ask those leading questions.

MR. FLEMING: I take it that Mr. Devorkin is not allowed to say, "Didn't you tell me?"

THE COURT: Of course, that's right.

(In open court.)

THE COURT: Go ahead.

Q Mr. Mandel, did Mr. Koniecke ever inform you that Mr. Chester Carity had approved the use of a dinner party program for ATC on behalf of Rio Rancho Estates?

A Not to my knowledge; no, sir.

Q Under your oath today you say that?

A To the best of my recollection, yes, under oath.

(Continued on next page.)

Q Did any other employee of ATC Realty or AMREP Corporation or Rio Rancho Estates ever inform you of that fact?

MR. FLEMING: Objection to that, your Honor.

THE COURT: Sustained.

Q Did you have any conversations with respect to Mr. Caricy's involvement in the initiation or approval of dinner party programs with any other people for whom you worked at ATC or AMREP?

MR. ARKIN: Objection.

THE COURT: This is too general. You are going to have to establish a conversation with somebody in authority, not just the fellow whose job it is to clean out the wastepaper basket.

Q Who did you work for at ATC Realty?

A I never worked for ATC Realty.

Q Who was your immediate superior during this period of time when the dinner party program began?

THE COURT: He says he worked for H.C. Printing during this period of time.

MR. DEVORKIN: I understand, your Honor.

THE COURT: Ask him who his boss was at H.C. Printing.

THE WITNESS: My boss was Joseph Gould.

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Q Did you work for anyone else?

A He was the one that was in charge of getting the invitations for the dinner parties out and I actually worked under him.

I handled it. I reported to him on the mailings, how many we were to mail, the areas. I also worked going to dinner parties and coordinated material for ATC Realty.

Q Did you have any conversations with any officers of ATC Realty about what you were doing?

A I had general talks. I don't know if it was an officer.

Q With whom did you have general talks?

A I had some general talks --

MR. FLEMING: Objection.

THE COURT: I will take the name, not what was said.

MR. FLEMING: No objection then, your Honor.

A I had general talks with Dan Friedman at one time.

Q Do you see Dan Friedman in the courtroom?

A Yes, I do.

Q Can you point him out?

A He is right behind you.

MR. DEVORKIN: Can the record reflect he has identified the defendant Dan Friedman, your Honor?

THE COURT: Yes.

Q What if anything --

MR. FLEMING: Can you fix a time, please?

THE COURT: Yes.

Q When were these conversations with Dan Friedman?

A They were general conversations as to --

Q When were these conversations?

A These were around the time that we started the dinner parties, different parties that I went to I just told him how I liked it. I also had a conversation with Howard Friedman I am sure around that time.

Q Do you see Howard Friedman in the courtroom?

A Yes.

Q Where is Howard Friedman?

A The gentleman with the glasses.

MR. DEVORKIN: May the record reflect that he has identified the defendant Howard Friedman.

THE COURT: Yes.

Q What if anything did you say to Howard Friedman?

A I went over various aspects as to the mailings, the kind of returns they were bringing in in general, certian of my observations at dinner parties.

Q What observations?

A Parts that I liked, the parts I didn't like, the parts I felt could be a little stronger.

Q What if anything did Mr. Howard Friedman say to you?

A Keep up the good work.

Q What if anything did Mr. Dan Friedman say to you?

A With Dan Friedman it was also strictly in the area of the kind of leads that were coming back. He asked if there were areas where we can mail less so it doesn't cost as much and I told him I would work on certain of those programs to see if we don't have to mail as many pieces, lesser pieces to get the same results.

Q Did you have any conversations with Mr. Chester Carity at this time?

A Along the same lines, yes. He asked me to test different pieces, different invitations to see which can get the best returns and he explained to me why you have to test.

Q Did you talk to Mr. Carity about your attendance at dinner parties?

A Yes, I mentioned to him I was attending dinner parties and he said fine, keep it up, I would like you to learn as much as possible about it.

Q Did you talk to him about your impressions of the dinner parties?

A Yes, I passed on to him my different thoughts.

Q What was his response?

A He said keep going and let me know how it is going, how you feel it is going.

Q Do you recall any suggestions he gave you?

A He gave me suggestions as far as the invitations, yes, quite a few of them which were very helpful.

Q How often did you speak to Mr. Chester Carity about those matters?

A I would say maybe a couple of times a week.

Q How often did you speak with Mr. Howard Friedman about those matters?

A I would say roughly the same period.

Q How ofter did you speak with Mr. Dan Friedman about those matters?

A Maybe a little more.

Q More than twice a week?

A Maybe three times, four times a week, yes.

Q What was the position of Daniel Friedman at that time?

A I believe he was treasurer or controller. I don't know if it was AMREP or one of the other companies.

Q What was the position of Howard Friedman at that time?

A I believe it was secretary-treasurer of AMREP.

Q Were there promotional materials used at these dinners?

A Yes.

Q Did you ever have any conversations with Mr. Henry Hoffman in connection with those materials?

A Not at that time but later on I did, yes.

Q Approximately when?

A I would say in 1966 I did.

Q How frequently did you speak with Mr. Henry Hoffman?

A Not that frequent. When we started to expand into different brokers and all, I spoke to him about different advertising pieces that might be helpful and he asked me how everything was going, if I had any suggestions, if there was anything that the sales offices needed as far as aids.

THE COURT: I gather all through this time you are still working for H.C. Printing Company?

THE WITNESS: At that time I was, your Honor. A certain point thereafter, I don't recall exactly, I did go to work for Sales Research which was the sub of AMREP.

THE COURT: Roughly when did you leave H.C. to go with Sales?

THE WITNESS: I started in Sales really in in 1966. I was devoting most of my time to it.

THE COURT: In 1966?

THE WITNESS: Yes.

Q You say Sales Research was a subsidiary?

A I believe it was a subsidiary. I was paid either in '66 or '67 by Sales Research. I don't recall exactly which year.

Q Your checks came from them?

A Yes.

Q Where was their office?

A Sales Research, 16 West 61st Street.

Q Which floor?

A I believe it was the ninth floor.

Q Which floors of that building did AMREP Corporation rent out, as far as you know?

A I believe the ninth floor.

Q The entire ninth floor?

A I don't know if they rented the entire ninth floor. I know H.C. Printing was on the ninth floor also. I don't know what the relationship was as far as renting it out.

Q What was the nature of your conversations with Mr. Henry Hoffman about these advertising materials?

A I believe one of the films that we had, I just felt that it should have been a little shorter. I felt from my own observation that people would not sit through any great length of time and watch a film and I felt that if it was possible that the film could be cut down that I think it would help tremendously. I also felt that we needed some reprints.

Q What do you mean by "reprints"?

A A newspaper reprint, a magazine reprint showing what was happening at Rio Rancho Estates. I felt that would be a very good aid to show the growth, what was going on.

Q Did you discuss those matters with Mr. Henry Hoffman?

A I discussed some of those, yes.

Q Do you know who approved or wrote the advertising pieces that were used at the dinner parties?

MR. ARKIN: It is not specific, I object. It's too general.

THE COURT: Do you know who wrote, that is what he just said.

MR. ARKIN: He said some of them, your Honor.

Q Any of them.

THE COURT: I will take any of them.

Q Do you know?

A Who wrote the advertising?

Q Yes.

A I believe Mr. Henry Hoffman and I believe Mr. Chester Carity.

Q Did you have conversations with them about that? That is about their involvement in preparing those materials?

A Yes, I spoke to them about different materials, yes.

Q Do you know what Mr. Hoffman's responsibilities were with respect to the film you mentioned?

A I believe he was involved in producing the film, yes.

Q You mentioned there came a time when there was an expansion of the number of brokers offices, correct?

A Yes.

Q Approximately when was that?

A That was approximately -- I believe the latter part of 1966 if I am not mistaken.

Q Into what areas did the brokers office expand?

A Additional brokers offices were opened throughout the country, throughout the United States.

Q Do you remember the initial areas that began?

A There was Pittsburg, there was Kansas City, there was St. Louis.

THE COURT: These are new ones or the old ones?

THE WITNESS: These were new offices that were opened up in 1966, your Honor, or '67.

THE COURT: Go ahead.

A St. Louis, I believe Connecticut. There was a broker in Ohio, but I believe around either the latter part of 1965 or 1966 he went into the dinner party program. California at one time had a dinner party program. I am sure I left out a couple.

Q Before the dinner party programs were used by any of these brokers, were they involved in any other kind of sales activity?

A Most of these were all brand new brokers who were brought in just for this specific marketing concept of dinner parties.

Q Were there some brokers that existed before these brokers came in?

A Yes.

Q Where were those?

A There was a broker in Ohio, acres and homes. I believe there was a broker in California, and there was a broker in Chicago, if I am not mistaken and one in Phillie.

Q Did you become familiar with the sales operation that those brokers were using before the dinner party concept developed?

A They were using a home sit program.

Q What do you mean by "a home sit program"?

A Where they would visit someone's home, show him a film, a presentation.

Q They show films or slides?

A A slide.

Q Was 346-D in evidence used at all in conjunctio with that?

A I honestly cannot answer it because I don't know if they used it at that point or if they did not use it. I was not on home sits with any of these people.

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Q Do you know whether it was sent out to those brokers at that time?

A Yes, I believe it was sent out to brokers.

Q What was the name of the film strip or the slide that was used by the home sit program?

A "Your Golden Future".

Q Please wait until I ask my question before you answer, okay.

THE COURT: I thought you had finished?

THE WITNESS: Yes.

Q Did you ever see yourself the slide presentation used?

A I saw the film strip, yes.

Q You saw the whole thing?

A Yes.

Q I will show you what has been marked as Government Exhibit 513-M for identification.

Would you take a loo through that, please. Have you ever seen that before?

A Yes.

Q When?

A You showed it to me.

Q Did you have a chance to look through it at that time?

A Yes. Yes, I did.

Q What is 513-M?

A It's a transcript of the record "Your Golden Future".

Q Is that a fair and accurate transcript of it?

A The only thing I question, which I was not sure, in it it says about "A master plan" and I mentioned to you I didn't think it was this individual, but outside of that, yes, it is.

Q Which individual did you think it was?

A You have down here Herman Oberman. I thought it was Leonard Oberman.

MR. DEVORKIN: I will offer 513-M, your Honor.

MR. FLEMING: Can we fix a date on this?

Q When was the home sit program used?

A What years?

Q Yes.

A It was used in 1964 and I believe the early part of 1965.

THE COURT: Did they show a movie or a slide?

THE WITNESS: It was a filmstrip, your Honor.

Q Was there a record that was played along with that?

A Yes, it was.

Q That 513-M transcript is for the record that was accompanying the filmstrip?

A To the best of my recollection, it seems to me, yes.

MR. FLEMING: May I ask a couple of questions from here, your Honor?

THE COURT: You may.

VOIR DIRE EXAMINATION

BY MR. FLEMING:

Q Mr. Mandel, 513-M is captioned "Transcript of Record, Your Golden Future."

Was this used in every state where Rio Rancho had an office, if you know?

A Not to my knowledge, I don't know.

Q Do you know what state it was used in, if any?

A I believe it was used in New York, if I am not mistaken.

Q Is that a guess or is that your testimony?

A I was never at a home sit so I cannot say specifically, but I did see the filmstrip and I did listen to the record in the New York office.

Q Is it fair to say that you have no idea where this particular transcript was ever used?

A I cannot say where it was used, I was never there, no, sir.

MR. FLEMING: I object to it then, your Honor.

THE COURT: Sustained.

BY MR. DEVORKIN:

Q Mr. Mandel, how do you know that the filmstrip-- withdrawn.

You say there was a filmstrip used in connection with the home sit program; correct?

A To my knowledge, yes.

Q How did you learn that?

A I believe one of the sales people in New York mentioned it to me.

Q Sales people for whom?

MR. FLEMING: I object and ask it be stricken.

THE COURT: Sustained.

Q Do you remember the name of the person?

A No, I don't. I am sorry.

Q Was it Mr. Koniecke?

A No, this was before Mr. Koniecke.

Q What position did this person hold with ATC?

A He was one of the sales people.

Q When you say sales people, what do you mean?

A He was a real estate salesman who went out to the home and sold to the people.

Q For ATC Realty?

A For ATC Realty, yes.

Q He told you that --

MR. FLEMING: If your Honor please --

THE COURT: Sustained.

MR. FLEMING: I ask all these answers be stricken.

THE COURT: Strike all the answers regarding this document. You will have to get somebody better than this witness to prove that this document, along with the filmstrip was shown in 1964 and early 1965.

MR. FLEMING: And where it was shown.

THE COURT: Obviously.

Q How did you come to listen to this record and see that filmstrip?

THE COURT: The mere fact that he listened to it does not mean that it was shown.

MR. DEVORKIN: I agree, your Honor.

THE COURT: So what difference does it make?

MR. DEVORKIN: I want to explore it that way step by step.

THE COURT: You don't have to.

He heard it. He said so. He listened to it.

He said so. He saw the script. He said so.

Now you have to prove that that was used before purchasers.

MR. DEVORKIN: I understand.

THE COURT: He cannot do it for you.

Q Who showed you the filmstrip?

THE COURT: A salesman, he said.

MR. DEVORKIN: I wanted to be clear about that because I am not sure, your Honor.

A A salesman told me that the filmstrip -- that they showed a filmstrip and all when they went on dinner parties.

Q On home sits?

A On home sits.

MR. ARKIN: I move to strike what the salesman told him.

MR. FLEMING: My problem was the transcript shown to a purchaser.

THE COURT: The objection is sustained. Get a salesmen in who did it, not him.

MR. DEVORKIN: I want to find out who showed him this filmstrip.

THE COURT: A salesman.

MR. FLEMING: It makes no difference for

the basis of my objection or I submit that.

Q Did you have any conversations with Mr. Carity about this?

A No, I didn't.

Q Mr. Hoffman?

A No, I did not.

Q Mr. Howard Friedman?

A No, I did not.

Q Did you have any conversations with any of them about changing from a home sit program to a dinner party program?

A No, I did not.

Q Do you know who Mr. Irwin Weinberg is?

A Yes, I do.

Q Who is he?

A He was an independent broker for Rio Rancho Estates in the State of Ohio.

Q He had a contract with Rio Rancho Estates to be a broker?

A I would assume he did.

Q Did you ever have any conversations with Mr. Weinberg?

A I had conversations with him when he went into the dinner party program.

MR. FLEMING: That is the answer. He had a conversation.

Q Would you just briefly describe the dinner party concept which began in 1965?

A A mailing would go out inviting people to attend a dinner party where they would be shown a film. They would have dinner. And in the invitation said they were under no obligation whatsoever.

They would attend the party, they would arrive at approximately seven o'clock. They would be greeted at the door. They would either sign a guess register sometimes and sometimes they didn't. They would be seated at a table with a sales representative. Generally it was one or two couples per table.

When the program would start a speaker would get up and welcome the people, tell them what they were going to see. Either at that time a film was shown or dinner was served.

After dinner there was another film shown. After the film, the speaker would get back up and talk to the people some more and at that point when he was finished the program was turned back to the sales representatives at the table.

Q What were the speakers' remarks based on?

if anything?

MR. ARKIN: Objection, your Honor.

THE COURT: Sustained.

Q Was the speaker --

THE COURT: Find out if he was present.

MR. DEVORKIN: He said already that he was present. He said he went to many of these dinner parties.

THE COURT: Ask him what he heard.

MR. DEVORKIN: There is another point --

THE COURT: I am sorry, I sustained the objection.

MR. DEVORKIN: All right.

Q Was the speaker at the dinner party given any materials to use?

A Yes, he had a script, a presentation.

Q Who supplied the script of the presentation?

A It was supplied by, I believe, ATC initially the script -- I know that Lou Koniecke brought over the basic script that was used. Who changed it exactly at that point I don't know.

Q Let's take one thing at a time.

How did the script --

MR. FLEMING: Can we take the first thing. Is this still 1965 that we are talking about?

THE COURT: I gather it is 1965 when they went into what he calls the dinner party program.

MR. FLEMING: We are talking about 1966.

THE COURT: The last of 1965 and the beginning of 1966, yes.

Q How did the script get to the man?

A Initially the script was brought over by Lou Koniecke when he came into the company to start dinner parties.

Q How did brokers beside ATC get scripts?

A Later on when we opened up brokers offices for dinner parties I was involved with the script, Chester Carity was involved with the script and I believe Henry Hoffman was involved with the script.

THE COURT: Now we have to ask you the question:

When did you get involved with dinner parties?

THE WITNESS: I started going full-time in the area of sales approximately 1966 when we started to put on additional brokers for dinner parties.

Q How did the additional brokers get scripts?

A They were given to them by myself.

Q Is that true of all brokers?

A Maybe with the exception of one or two that someone else gave it to them, but to my recollection I gave it to them.

Q Did they all get the same script?

A They all got the same basic script, yes.

Q What instructions, if any, were they given with respect to the script?

A They were told to follow the script. Do not deviate. If they want to make a change, if they feel something should be changed that they were to check with me.

Q Who actually prepared these scripts?

A It was prepared either by my secretary -- I believe it was my secretary, but I know I worked on it, Chester Carity worked on it --

THE COURT: Wait. We want to know who prepared it. By that I mean who wrote it, not who typed it.

THE WITNESS: A combination of three people.

Q Who were the three people?

A Henry Hoffman, chester Carity and myself.

Q What other materials besides the script were used at these dinner parties?

A There was a film and there were some reprints.

Q Where did the sales offices get these materials from?

A They were sent from my office.

Q Now, the format that you have just described for the dinner party, was that format used at all dinner parties?

A Yes, sir.

Q How did the sales offices get informed of that fact, if at all?

A Well --

MR. ARKIN: Objection, your Honor. I don't understand that question.

THE COURT: Reframe your question.

Q Were the sales offices given any instruction with respect to the format?

A How to run a dinner party, yes.

Q By whom?

A By myself, primarily.

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Q What were they told in substance?

A They were told how to book restaurants, they were told how to set up a restaurant. They were told how to seat people. They were told the basic format to follow. They were told how to sit at a table, how to conduct themselves. The proper atmosphere, whether to show the various films.

Q Is that true of every sales office?

A Just about, I believe, yes.

Q How long were you involved in this aspect of dinner parties?

A I was involved in it until the latter part -- until about the middle of 1970.

Q WHo did you work for during this period of time?

A Who did I report to?

Q Yes.

A I reported to Chester Carity.

Q Do you know on what basis the brokers were paid, if at all?

A I believe they received 15 per cent commission plus some sort of a bonus.

Q Who paid for the promotional materials that you have mentioned?

A The promotional material was sent from my office.

Q AMREP paid for that?

A I would assume so.

Q The broker didn't pay?

A The broker did not pay for it.

Q Who sent the mailings out for these dinners?

A I did through someone.

Q That was AMREP?

A Yes.

Q Who paid for the mailings?

A The company.

Q Which company?

A AMREP.

Q Would you please describe how you actually went about setting up new offices, obtaining new brokers?

A Different ways. Either we would put an ad at the time in the newspaper, recommendations of people who we knew who were good brokers or people calling directly to the company wanting to represent the company as a broker.

Q Did you get any instructions with respect to do that?

A You mean to put an ad in the paper?

Q Yes, for a new office.

A Yes.

Q Who gave you the instruction?

A It came from Chester Carity.

Q Who made the decision to open up a new office?

MR. FLEMING: I object to that.

THE COURT: Overruled, if he knows.

MR. FLEMING: The type of knowledge. Your Honor knows the type of knowledge I am talking about and I think sometimes witnesses get confused.

THE COURT: Do you know who made the decision to open up a new office?

A It was a combination of people.

Q Who was involved in it?

A I was involved in it, Chester Carity was involved in it, Mike Roberts was involved in it.

Q Who was Mike Roberts?

A Mike Roberts was in charge of personnel.

Q He was an officer of AMREP?

A Yes.

Q Anyone else involved in it?

A I believe Dan Friedman was involved in it to a degree. He got involved in the setting up of offices.

Q After the ad was placed, what, if anything, would happen?

A It would depend. At times someone might go out to visit the broker or the broker was brought into the New York office. At that time he would be interviewed.

Q Who would interview him?

A I would interview him. Mike Roberts would interview him or Chester Carity would. At times Daniel Friedman would. At times Howard Friedman would.

Q Did Mr. Carity or Mr. Howard Friedman ever go out in the field to interview a broker, a potential broker?

MR. FLEMING: Is this again personal knowledge? I object to the form.

Q To your knowledge.

THE COURT: Yes.

Q To your knowledge, Mr. Mandel.

A To my knowledge, yes, Mr. Carity went out to a broker, an O&O office manager.

Q What do you mean by an O&O office manager?

A That's an office owned and operated by the company.

Q After the interviews were conducted, what, if anything, would happen.

A There were times that we might have a discussion about the individual.

Q Who would have a discussion?

A I would, Chester Carity might, Mike Roberts, Daniel Friedman might, either the broker was put on or he wasn't put on.

Q Did you have conversations about that with Howard Friedman also?

A I believe there were times Howard Friedman was involved also, yes, sir.

Q After the decision was reached, what, if anything, was done?

A Then the broker would be -- if we were going to put the broker on, we would ask him to come back in about a week or so to spend a week and I would work with him and Dan Friedman would work with him.

Q What would you do?

A I went over with him as to how to set up a dinner party. I went over with him how to select restaurants. I went over with him the various mailing areas, how many people should be in the radius to do mailings. I went over with him different material. I went over with him a script that he was to use, the presentation he was to use.

Q What, if anything, did Daniel Friedman do?

A Internal as far as setting up an office, keeping the various forms that were needed by the company, transmittal forms, et cetera.

Q Was this always done in the New York office, this training or orientation?

A Not all the time.

Q Where else might it be done?

A It might be done in a broker's office.

Q Was the broker given his materials at that time?

A No, he wasn't.

Q When did he get those?

A He was sent his materials before -- a couple of weeks before he was to have his dinner parties.

Q He was sent them in the mails?

A There were times they were sent in the mail. There were times if someone was going out they might bring some stuff. Mostly it was sent to him in the mail, yes, sir.

Q When this orientation period was going on, did Mr. Howard Friedman or Chester Carity participate in any way?

A I know that Howard Friedman did speak to the individual just to give him a little background as to the company AMREP, but he never got involved in any of the training nor did Chester Carity. That was strictly myself and Daniel Friedman.

Q When this dinner party program began, do you know of your own personal knowledge whether any of the officers of AMREP Corporation went to the dinner parties, the initial dinner parties?

A I know that initially when we put on some brokers, yes, I know Howard Friedman went to a dinner party.

Q How do you know that?

A I went with him.

Q Did you have any conversations with him about that?

A About the dinner party?

Q Yes.

A Just what we thought of it. Just my interpretation of what I liked, what I didn't like and just in general what he felt about it.

Q Did you go to dinner parties with any other officers of AMREP at that time?

A At that time, no.

Q Do you know whether any other officers of AMREP went to dinner parties without you at that time of your own personal knowledge?

MR. FLEMING: I object.

THE COURT: How can he know if he wasn't there?

Q Did you have any conversations with any officers of AMREP Corporation about their attendance at these initial dinner parties?

A Yes.

Q Which officer?

A I believe Howard Friedman went to a few dinner parties.

Q Any other officers?

A I believe Dan Friedman also went to a couple of dinner parties, too.

Q You had conversations with Dan Friedman about his attendance at those initial dinner parties?

A I believe so, yes.

Q What was the nature of the conversation?

A Again just giving what he felt, if they did a good job, if they didn't do a good job. He might have felt that I should go out there and retrain him, I did a bad job.

Q Did you have any conversations with Chester Carity or Henry Hoffman about their attendance at initial dinner parties?

A No. Henry Hoffman never nor Chester Carity initially.

Q Which was the largest of the brokers that were selling Rio Rancho properties?

MR. ARKIN: May we have a time, your Honor?

Q Through 1967.

A I believe it was Ohio.

Q What about ATC Realty?

A I don't believe they were the largest at that period.

Q When you were setting up these brokers for AMREP, did you ever go out in the field to visit the broker?

A Yes, I did.

Q What was the purpose of going out in the field to visit the brokers?

A To make sure that they were set up properly, make sure that they were setting up the dinner parties, making sure that they were following what we told them, making sure that the salesmen were not saying things they shouldn't be saying, making sure that the speaker was not saying things that he should not be saying, making sure that the party was being held, the dinner party was being held on the level that we wanted.

I might just train some sales people.

Q Who did you report to about your trips to brokers, if anyone?

A Chester Carity.

Q Did you have any conversations with him about those trips?

A Yes, I did.

Q What would you say to him?

A I told him what happened. I told him I think an office is going to make it, it might not make it, that I might have to spend more time out there, there might be a problem office.

Q Did you have any conversations with Mr. Howard Friedman about that?

A I am sure I did along the same lines.

Q Did you have any conversations with Mr. Henry Hoffman about that?

A Not about the office trip per se, no, sir.

Q What would your conversations with Henry Hoffman be?

A Pertaining to some piece of advertising that I felt we might need.

Q What would the nature of those conversations be?

A If we could get any reprints for that specific area from certain newspapers if there was anything available.

Q Did you talk to Mr. Daniel Friedman about your trips?

A Yes, sir.

Q What were the nature of those conversations?

A Pertaining to the way that the office was being set up, that they were transmitting, I might have gone out there and he might have asked me to check into the office set-up because they were not transmitting forms properly, they were not doing certain paper work properly, which when I came back I would go over that with him.

Q When was it that you became a vice president of AMREP Corporation?

A 1968.

Q You were vice president of sales, is that correct?

A Yes, sir.

Q Do you recall who gave you that position?

A The specific individual?

Q Yes.

A I believe there were a few people there and they all said congratulations.

Q Who said that to you?

A I believe it was Chester Carity and Howard Friedman. Someone else might have been there, I just don't recall.

Q Did there come a time when AMREP set up what you called owned and operated brokers?

A Yes, sir.

Q Just again what is an owned and operated broker?

A That's owned and operated by the company.

Q When was that?

A Oh, it was probably the latter part of 1966 or sometime in 1967 to the best of my recollection.

(Continued on next page.)

Q Did you have any discussions with anyone at AMREP, any officers at AMREP about a decision to set up owned and operated offices?

A Yes.

Q With whom?

A There was a meeting, Chester Carity was there, Daniel Friedman, I believe Mike Roberts was there and I am not sure if Howard Friedman was there. He might have been, I am not sure.

Q What was said at that meeting?

A I had asked for the meeting because I felt for us to have the proper control -- one of your biggest problems was that with brokers you have no real control over them because they are independent. A lot of them were not financially set up. Some of them were running into problems where bills were not being paid. If we wanted to make a change in that particular area that means we were shut down for quite a while and I felt that the best way to go would be to transfer to an owned and operated office.

Q What was the response to your suggestion?

A It was very favorable because we did transfer.

Q Do you know who made that decision?

A It was just a complete agreement, no one individual. The individuals at the meeting.

Q What if anything was done in connection with that change-over?

A Well, then we started to shut down certain of the offices that were not productive. We then proceeded to speak to different people to become managers. We advertised. We went through our backlog of people who had inquired about coming to work for the company.

Q Did you go through the same interviewing process each time?

A Yes, basically the same.

Q Were the same people involved in it?

A Yes, sir.

Q Do you recall where you set up these owned and operated brokers? Tell us as many of them as you can remember.

A We set up in Chicago, Colorado. We set up in Massachusetts. We set up in St. Louis and there were many, many more.

Q Can you try to remember as many as possible?

A We set up in Iowa. I believe we set up in Pittsburgh. I think I said Massachusetts.

Q Philadelphia?

A Philadelphia, yes.

Q Seattle?

A Seattle.

Q Mayrland?

A Maryland.

Q Tennessee?

A And Tennessee, yes.

Q New Jersey?

A Yes, we set up in south Jersey and north Jersey, yes, sir.

Q Buffalo, New York?

A Buffalo, New York.

Q Do you recall the name of the broker in Buffalo?

A Buffalo was an owned and operated office.

Q Was there a name for the broker?

A BTG, I believe.

Q What were your responsibilities as vice president in charge of sales?

A It was to formulate policy. It was to make sure that the policy was followed through. It was to make sure that sales were on the level, on an upper level, that sales people were selling and representing the product properly.

Q You say properly. You mean as instructed by AMREP?

A As instructed by myself.

Q Who worked for you?

A Initially?

Q Yes, what kinds of paople?

A I had regional sales managers, national sales managers, office managers.

Q What were the functions of regional sales managers?

A To follow through on any policy that I might have passed on to them to make sure that the dinner parties were being run properly, to make sure that sales people were saying what they were supposed to say to the best of their ability.

Q They would handle the offices in a region they were assigned to?

A Yes, sir.

Q Would they visit those offices?

A Continuously.

Q What were the functions of the national office, AMREP, in New York in connection with the dinner parties that the owned and operated brokers were running?

A That was basically myself was to transmit the information I wanted, to review sales figures, to go over what I felt was not happening properly, to make certain changes.

Q Did they continue to send out mailings?

A You are talking about dinner parties, invitations?

Q Yes.

A Yes.

Q That was still done by AMREP in New York?

A Yes.

Q What about the creation of advertising of promotional materials, who did that?

A I believe different people worked on it. I came up with a few things. I believe Chester Carity came up with a few things. Henry Hoffman came up with a few things.

Q Before a piece of advertising of promotional material could be used who had to approve it?

A If it was New York, New York State had to approve it.

Q Who in AMREP had to approve it?

MR. FLEMING: Was there an approval policy?

THE WITNESS: No. If I wanted to send it out I sent it out.

Q Who did approve, if anyone, a new piece of promotional material?

A There were times I approved it. There were times Chester Carity approved it.

MR. FLEMING: Objection to the form of the question.

A If I felt the material was good and when we sent it to whatever agency that we had to send it to and it was cleared I sent it out.

Q Did you have any responsibilities with respect to sending materials to any agencies? You personally.

A Me personally, no, sir.

Q Did you also continue to evaluate the performance of the sales offices?

A Continuously.

Q Were there any traning meetings held for sales office managers?

A Yes, there were.

Q How often?

A When needed.

Q What would happen at these training sessions?

A Well, I would go over possibly with an office to show figures of where their volume has come down, try to find out what they were doing wrong, try to update them with new material if there was new material, new happenings at Rio Rancho, new homes going up.

Q Would the regional managers conduct any training sessions in their visits to sales offices?

A Yes, they would.

Q What would they do at these training sessions?

A Again, it might be just a session where you try and motivate the sales people. It might be a session where they are not doing certain things at a dinner party that they should be doing.

Q As vice president of sales who was your immediate superior?

A Chester Carity.

Q Did you prepare any kind of reports with respect to the periodic progress or sales of these offices?

A Yes, I did.

Q How frequently were those reports prepared?

A Once a month.

Q Did you speak with any of the officers of AMREP about those reports?

A I would send copies to them.

Q Who would you send copies to?

A Dan Friedman, Chester Carity and Howard Friedman.

Q What was the nature of this report?

A Well, it showed the areas that the office was doing well, the areas they weren't doing well. I would just give a little summary as to the overall production for the month of the areas I felt they needed improvement, the areas they were doing well, at times give them a little pat, at times a little needle.

Q Were these sales reports also sent to the sales office?

A Yes.

Q Did you have any discussions with Mr. Howard Friedman or Chester Carity or Dan Friedman about those reports?

A I am sure I must have in general, nothing specific.

Q Did you go over the reports at times with them?

A I might have gone over one or two areas with them. Not the entire report.

Q Did you have any discussions with Mr. Howard Friedman about the other activities that you were involved in with respect to the sales offices?

A Pertaining specifically to sales?

Q With respect to the work you were doing with sales offices.

A I mgith have mentioned to him that such and such office is suddenly starting to come around, that they are starting to do the volume.

Q Do you know what other functions Mr. Friedman performed for AMREP?

A I believe it was in the area of financial.

Q What do you mean?

A At a certain point he became president of AMREP and I believe working with analysis and various and sundry things. I never got specifically involved in what he did, no.

(Continued on next page.)

Q Did you have any conversations with Howard Friedman about his visits to sales offices? That is after the initial period of time, once the owned and operated owners got going.

A If he should visit an office he would come back and tell me what he felt of it, either was well organized or just his opinion of the office itself, the way the dinner party ran, yes, sir.

Q How many times a year did Mr. Howard Friedman attend or visit sales offices?

A I would say any given year maximum twenty-five times.

Q Did you have similar conversations with Mr. Chester Carity?

A If he did go to a dinner, yes.

Q How many times a year would Mr. Chester Carity visit a sales office?

MR. FLEMING: I object to the form of the question.

THE COURT: If he knows.

MR. FLEMING: How many times he talked to Mr. Carity?

Q How many times did you have these conversations with Mr. Chester Carity?

A I would say maybe a maximum of five times a year.

Q Did Mr. Daniel Friedman go to sales offices?

A Yes, he did.

Q Did you have conversations with him about his visits?

A Yes, I did.

Q Were they of the same nature?

A Same nature.

Q How many times a year would you have conversations with him about that?

A To my recollection he maybe went ten times maximum.

Q Did you have any conversations with Mr. Henry Hoffman about his visits to sales offices?

A I don't recall him visiting sales offices.

Q Do you recall any conversations with Henry Hoffman about visits to sales dinners?

A He went to some sales dinners, yes.

Q How many times a year would you have conversations with him about that?

A Again I would say in the area maybe maximum of five times.

Q Besides this training of brokers or owned and operated brokers, did you work on anything else with Mr. Dan Friedman?

A I just worked in conjunction as far as making sure that the office performed the things that he needed.

Q Such as what?

A The various forms that were coming out, the transmittals were coming out properly, never in the area of sales.

Q But when you had these conversations with the gentlemen you just mentioned about visits to sales offices, did they include discussions about sales dinners they attended?

MR. FLEMING: Objection to the form.

THE COURT: Overruled.

MR. FLEMING: The generality is my objection, your Honor.

THE COURT: Overruled.

MR. FLEMING: Can we be specific as to each person?

THE COURT: Which one do you want to take first?

Q Howard Friedman.

Did the conversations include talk about sales dinners that he attended?

A He told me his feelings if he felt it was a nicely run dinner or not.

Q Did the conversations with Mr. Henry Hoffman include that?

A I am sure it did, yes.

Q Did the conversations with Mr. Daniel Friedman include that?

A Yes, it did.

Q Did the conversations with Mr. Chester Carity include that?

A Yes, it did.

Q By 1968 how many sales offices around the country were there?

A Between brokers and owned and operated offices -- it would be really a guess on my part. It could have been in the area of fifty. I just don't really recall.

Q Fifty?

A It might be in the area of fifty. I don't recall.

Q You think it might be about fifty?

A It sounds like a good figure.

Q Did you keep some independent brokers in addition to the owned and operated brokers?

A Yes, sir.

Q Where were the independent brokers?

A In 1968?

Q Yes.

A Ohio. I believe there was also one in Michigan at that time. I believe there was one in Las Vegas. There was one in Texas. There was one in Utah. There was one out in Long Island, Nassau County.

Q Did there come a time when those were cut back?

A Well, I was with the company and I think the only one that might have been cut back was Texas, if I am not mistaken.

Q Was there a broker in Connecticut?

A Yes, there was.

Q Who was that broker?

A His name is Lou Koniecke.

Q Do you know what the reasons for giving Mr. Koniecke a brokership were?

MR. FLEMING: Personal knowledge?

THE COURT: Sustained.

Q Were you involved in that, based on your personal knowledge?

A I did not give him a brokerage.

Q Do you know who did?

A I believe he might have spoken to Mr. Carity.

Q How do you know that?

A Because I believe he mentioned to me that he was going to be opening up --

MR. ARKIN: I move to strike his previous answer as based on hearsay, your Honor.

THE COURT: He says he spoke to Carity.

MR. ARKIN: Koniecke.

THE COURT: Sustained.

THE WITNESS: I spoke to Koniecke.

Q Who was the broker in Minnesota, if there was one?

A Miles Lynn.

Q Who was Miles Lynn? Had he worked for the company?

A He had worked at the company sometime prior to my being there or being involves in sales, yes.

Q Was there a broker in Wisconsin?

A Bernard Stolzman.

Q Who was Bernard Stolzman?

A He worked for ATC Realty starting the dinner parties.

Q Did you have anything to do with giving Mr.

Stolzman a brokership?

A Yes, I gave him a brokership.

Q What was the reason for that?

A Twofold, I felt he could do a good job and I felt he did a good job setting this up in New York. It was my way of syaing thank you to him.

Q During this period of time what was the nature of your relationship with your immediate superior, Mr. Carity?

MR. ARKIN: Objection.

THE COURT: Sustained.

Q What kind of matters if any would you deal with with Mr. Carity?

MR. FLEMING: Can he ask did he deal with him, if your Honor please?

THE COURT: He already answered that he had sometime ago.

Q What was the nature of your dealings with Mr. Carity?

A I would update him as to what is happening with sales, how the offices were doing.

Q Anything else?

A Basically in that area strictly, what I was doing.

Q Do you know Mr. Peter Zaknick?

A Yes.

Q Who was he?

A He was my national sales manager. He was a regional manager, national sales manager. Prior to that when he came to the company he worked out of the St. Louis office.

Q Did he work for you?

A Yes, he did.

Q When you set up these new offices and trained the broker and so forth, did you have any kind of manual?

A Yes, there was an initial manual, yes, sir.

Q What did that manual include?

A It was a basic checklist that showed how to go about selecting restaurants. There was a diagram of how to set up the tables at a dinner party, where to put the screen and all. It showed how to sit at the tables. It included all the various forms that were needed, transmittal type forms and all and it was also a page or two pertaining to the dinner party itself, what time it should start, how the salesmen should be.

THE COURT: We will adjourn at this time for lunch. Please return at 2:15.

(Jury left the courtroom)

(Luncheon recess)

A F T E R N O O N S E S S I O N

2:15 P.M.

(In open court - jury present)

HOWARD MANDEL, resumed.

THE COURT: You may proceed.

MR. DEVORKIN: Thank you, your Honor.

DIRECT EXAMINATION CONTINUED

BY MR. DEVORKIN:

XXXX

Q Mr. Mandel, before lunch we were talking about this sales manual. You had described what it contained, I believe.

Who prepared the sales manual?

A The majority of it I did.

Q Who else, if anybody, worked on it?

A Dan Friedman and Mike Roberts.

Q Was this manual given to the sales offices around the country?

A Yes, it was.

Q Can you keep your voice up.

A Sorry, yes, it was.

Q Mr. Mandel, do you know who Marianne Newman is?

A The name is familiar, but I cannot place it, I am sorry.

Q Was she an employee of Rio Rancho Estates? You don't recall?

A The name is familiar, but I just don't recall.

Q Do you know who Floyd Vanderwart was?

A I know there was a Floyd in advertising. I don't recall his last name. If it is the same individual.

Q Do you know who Jack Friedman was?

A No, I don't.

Q Do you know who Arthur Mantel was?

A Arthur Mantel I believe is a lawyer for AMREP.

Q In-house lawyer?

A I believe so.

Q Who was Peter Miller?

A Peter Miller?

Q Yes.

A Peter Miller was the manager of ATC Realty.

Q Who was Hugh Hood?

A Hugh Hood was in charge of housing at Rio Rancho Estates.

Q Who was Leonard Geller?

A Leonard Geller was a manager at ATC Realty.

Q Who was John Sommerhalder?

A John Sommerhalder was overall manager of Rio Rancho Estates.

Q At Rio Rancho?

A At Rio Rancho Estates.

Q Was he an officer of Rio Rancho Estates?

A He might have been. I know he was not an officer of AMREP.

Q Who was Phillip Frankenfeld?

A I don't know.

Q Who was Jeffrey Simon?

A I don't know.

Q Do you know who John Mullan was?

A I don't know.

Q Who was Bernie D'Amour?

A Bernie D'Amour was a regional manager.

Q Did he work under you?

A Yes, he did.

Q Who was Barry Wohlman?

A It's a familiar name. I cannot place it.

Q Was there a Mr. Goldman who was a regional manager?

A Under me, no.

Q Was there a Mr. Villarose?

A Pardon me?

Q Villarose.

A Mark Villarose was the salesman in the Philadelphia office.

Q Do you know a Miss Bruni?

A Miss Bruni?

Q Or Mr.

A No, I don't.

Q Do you know a Mr. Grumpel?

A Bruce Grumpel?

Q Yes.

A Yes.

Q Who was he?

A At one time he was assistant to me. Administrative assistant to me.

Q Who was Ray Radcliff?

A It's a familiar name. I can't place it. I am sorry.

Q Do you know who Don Potter was?

A Yes, Don Potter was a salesman at Rio Rancho Estates and then he was a sales manager at Rio Rancho Estates.

Q Do you recall when he was a sales manager at Rio Rancho Estates?

A I believe around 1969, 1970, if I am not mistaken.

Q Do you know who Louis Bastone was?

A No, I don't.

Q Do you know who a Lloyd Simon was?

A No, I don't.

Q Do you know who William Carroll was?

A No, I don't.

Q Do you know who Dick Gangel was?

A No, I don't.

Q Who was Sherman Lurie?

A Don't know.

Q Do you know who Barbara Mackin was?

A I do not.

Q Do you know who Ross Montague was?

A Yes, I do.

Q Who was he?

A At one time he was the manager for the Buffalo office.

Q That was BTG Realty?

A Yes, it was.

Q Do you know who Robert Walsh was?

A He was in Albuquerque someplace. I don't recall, someplace.

Q At Rio Rancho Estates?

A I don't know if he was connected with the company or if he was an outside consultant.

Q Do you know who Robert Rountree was?

A I do not.

Q Clarence Cummings?

A Yes. Clarence Cummings worked at Rio Rancho Estates.

Q What was his job?

A I believe he was controller.

Q Do you know who Tim Schidlo was?

A Yes, I do.

Q Who was he?

A Tim Schidlo worked in bookkeeping.

Q Where?

A In New York.

Q For Rio Rancho?

A Yes, I believe so.

Q Who was Charlotte Masone?

A I don't know the name Charlotte Masone.

Q Do you know a James Wall?

A Jim Wall?

Q Yes.

A Yes.

Q Who was he?

A He worked at Rio Rancho Estates. He was in charge of the tours.

Q Who was Irv Roth?

A Irv Roth was a broker in Long Island.

Q Did he have any other duties after that?

A After that?

Q Yes.

A While I was with the company he was a broker.

Q Who was Theodore or Ted Montaya, do you know?

A Ted Montaya?

Q Yes.

A I believe Ted Montaya was an attorney in Albuquerque.

Q Was he AMREP's attorney in New Mexico?

A I believe he might have been.

Q Do you know a Sara McLain?

A It's a familiar name. I believe she worked in Albuquerque.

Q For Rio Rancho Estates?

A Yes, I believe so.

Q Do you know Clyde Larramore, yes, sir.

MR. FLEMING: Your Honor, if we have a hundred more to go. I would object on relevancy grounds.

THE COURT: Sustained.

MR. DEVORKIN: I just have a few more to go, your Honor.

THE COURT: You could have done all this outside and limited your questions to the ones he knew. Go ahead.

Q Who was Clyde Larramore?

A I believe he worked in Florida.

Q Did he work for Rio Rancho Estates?

A I don't recall. I know he worked in Florida.

Q Do you know Don Pfaff?

A Yes, I do.

Q Who was he?

A Don Pfaff was involved in construction of houses in Florida.

Q Did he work at Rio Rancho Estates?

A I believe he also worked at Rio Rancho Estates, yes.

Q Who was Grover Jones?

A I am sorry.

Q Al Dellentash?

A Don't know.

Q Who was Bob Whalen?

A Don't know.

Q Do you know Mr. Ryno?

A Bill Ryno?

Q Yes.

THE COURT: I don't see the point of all this. You should have gone over this with the witness outside and only asked him here the names of the people you knew he knew. Why go through a lot of names he never knew and never heard of.

At best he can say maybe, I don't know, he worked someplace. That is not helpful.

Next question.

Q Directing your attention to the sales dinner presentations, Mr. Mandel, did the speakers podium or did the speakers speech ever change?

A It did change at times, yes, sir.

Q How were the changes developed; how were the changed versions developed?

A I was involved in changing them.

I believe once or twice in conjunction with Chester Carity.

Primarily I instituted changes.

Q Did you ever get involved with Henry Hoffman in changing the speaker's presentation?

A Not that I recall.

Q What about the other materials used at the dinners; did they change from time to time?

A Yes, they did.

Q Who was involved in making those changes?

A I was, Chester Carity and I believe Henry Hoffman might have got involved in it.

Q Do you recall the names of the films that were used at the dinners?

A Your Golden Future, West Side Story, and I believe there was another one, which I don't recall.

Q Was that third film used all the time?

A No, it was not used all the time.

Q As far as you know, who wrote and produced West Side Story?

A The West Side Association of Albuquerque.

Q As far as you know who wrote and produced "Your Golden Future"?

A It was produced, I believe, by AMREP Corporation

Q Which officer of AMREP, if any, did that?

A I believe Henry Hoffman.

THE COURT: You were asked who wrote and produced. You limited your answer just to production.

What about writing?

THE WITNESS: I would have to assume that he also wrote it.

THE COURT: We won't take an assumption.

Stike any reference to Hoffman regarding writing.

end tlapm

Q Mr. Mandel, showing you what has been marked Government Exhibit 315 for identification, would you examine it? Have you had a chance to see that before?

A Yes, I did.

Q How can you tell that?

A I saw this in your office.

Q How can you tell that from the document; is there any way you can tell that?

A Yes, it has my initial on the back.

Q What is Government's Exhibit 315 for identification?

A That is a dinner party presentation.

Q Who prepared that particular presentation?

A That was prepared primarily by Lou Koniecke.

Q Who else prepared it?

A I believe Chester Carity also worked on this.

Q Who used that presentation, if anyone?

A It was used by Lou Koniecke at a dinner party.

Q In New York?

A Yes.

Q That was for ATC Realty?

A Pardon me?

Q That was for ATC Realty?

A Yes.

Q Did any other offices use this presentation?

A This particular one, I don't believe so.

MR. DEVORKIN: I offer 315.

MR. ARKIN: May I have a few questions on the voir dire, your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. ARKIN:

Q Mr. Mandel, do you know whether this particular script was used at any particular time?

A I believe that was used at the beginning of the dinner party.

Q At any particular dinner party with this particular script?

A It has on it Casa Bella in Brooklyn.

Q But you don't know that?

A ~~If~~ it was used at the Casa Bella, I don't know that, no.

Q YOu do know that scripts changed or varied from time to time, didn't they?

A Scripts did change, yes, sir.

Q You can't very well say whether this particular script was used at Casa Bella or any place else, isn't that so?

A It's a script similar to one that I heard used.

Q But not necessarily the same?

A To the best of my knowledge, it sounds like the script that I had heard.

Q Used when, at what particular time?

MR. DEVORKIN: That was asked and answered, your Honor.

THE COURT: Go ahead.

A It was used in approximately 1965 when we started the dinner parties.

THE COURT: What he is trying to find out is this is the only one used?

THE WITNESS: No, I said before that there had been changes in scripts.

THE COURT: Was this the first one?

THE WITNESS: To my knowledge it sounds like the first script used, yes.

THE COURT: For how long a period of time was that used at dinner parties?

THE WITNESS: It was probably updated within a six-month period or a four-month period.

THE COURT: For that four-month period would that have been the only script that was used?

THE WITNESS: To my knowledge, yes.

MR. ARKIN: Your Honor, on the basis that there were various scripts at various times, we would object.

THE COURT: Overruled in view of the witness' answer to my question.

XXX (Government's Exhibit 315 received in evidence.)

MR. FLEMING: I know your Honor has already received it. My objection really is that I request it be received subject to connection of a purchase.

THE COURT: Obviously all of these come in subject to a purchase. The mere fact that this was used, if nobody involved in this lawsuit ever heard of it, it goes out. I said this on prior rulings. I thought that was clear.

BY MR. DEVORKIN:

Q Showing your Government's Exhibit 316 for identification, do you recognize it?

A Yes, I do.

Q How do you recognize it?

A It has my initial on the back.

Q Have you had a chance to look through it before today?

A Yes, I did.

Q What is Government's Exhibit 36 for identification?

A It's a dinner party presentation.

Q Who prepared that particular presentation?

A I did.

Q When?

A In 1966.

Q Did anybody help you prepare it?

A I believe Chester Carity might have added some things to it.

Q Who approved it finally?

A I approved it.

Q What was the date again?

A 1966.

Q Was it used anywhere?

A Yes, it was used by some brokers.

Q Where were those brokers?

A I believe in Pittsburgh, Kansas City, Connecticut possibly, St. Louis.

Q In New York?

A No, I don't believe this was ever used in New York.

Q You sent this out to the brokers outside of New York?

A Yes.

Q For how long a period of time was that script used?

A I would say a maximum of maybe six months, four or five months, in that area.

THE COURT: Wait. You say 1966, the beginning of 1966, the middle of 1966, the end of 1966?

THE WITNESS: March 7, 1966.

THE COURT: Used for how many months?

THE WITNESS: A maximum of six months.

Q Did that script replace any other scripts?

A No, this script, I believe, was the initial script that we used with brokers and I believe there was another version of this used for New York.

Q You say scripts were changed from time to time and that this script was used for five or six months. Were there any changes in substance in this script at the end of five or six months?

A There was updating information, different things happening. I might have had them put in a joke some place, take out a joke.

Q In substance the scripts remained the same?

A In substance the scripts were basically the same format. Just basically information changing.

Q On this script there are X's typed in over certain words and there are some portions that are written out with a pen or pencil or crossed out. What do those markings signify, if anything?

A That we took something out. That I took something out and changed it. The sentence might have been too long. It might not have read properly.

I was continuously trying to update scripts to make them as concise as possible. Not lengthy. It was conceivable that these changes were strictly too many words, a changing of words.

Q In its marked-up form it is in the form that it was used after it was approved?

A Yes, sir.

THE COURT: Now, wait. You said that the scripts in your hand, Government's Exhibit 316 for identification, was used for six months.

THE WITNESS: Yes, sir.

THE COURT: In what form was it used, the original or in the marked-up form? You have a mrked-up copy in your hands?

THE WITNESS: The way it is with the marked-up changes.

THE COURT: The way it is with the marked-up changes, all right.

THE WITNESS: Yes, sir.

Q At the top it says here, "Duke's presentation." Who was Duke?

A I am.

Q That was the anme you were referred to by?

A Yes.

MR. DEVORKIN: I offer 316.

VOIR DIRE EXAMINATION

BY MR. ARKIN:

Q Mr. Mandel, you say this was not used in New York, is that correct?

A That's correct, sir.

Q It was used in what states or what areas?

A I believe it was Pittsburgh, Kansas City, probably Connecticut.

Q You are not sure it was used in Connecticut, though, are you?

A I couldn't say 100 per cent that it was used in Connecticut.

Q You really can't say it was used in Connecticut?

THE COURT: He says not 100 per cent.

MR. ARKIN: Thank you, your Honor.

Q Where else, sir, was it used, to your knowledge?

A Pardon me?

Q Where else, to your knowledge, was this script used?

A It was used in Pittsburgh. It was used in St. Louis. It was used in Kansas City.

Q This was only used during 1966, I take it?

A Yes, sir.

Q It was not used later?

A Right.

Q Later there were different scripts, is that correct?

A Yes, sir.

MR. ARKIN: If your Honor please, we would except to this on the grounds it does not relate to any of the particular allegations in this indictment.

THE COURT: You can't tell yet. I will take it subject to the limitation I gave before to Mr. Fleming.

MR. FLEMING: May I ask one question?

VOIR DIRE EXAMINATION

BY MR. FLEMING:

Q Did you ever hear this script used?

A Yes, I did.

Q In what town?

A In St. Louis.

Q So with regard to two other cities is that it wasn't sent there, but you didn't hear it used?

A Yes, sir.

MR. FLEMING: I would object to it except as to St. Louis and even there subject to connection with a purchase.

THE COURT: Overruled. The witness' testimony is that this material was sent out with a strict instruction not to vary from it. That's his testimony and it comes in subject to the connection that you get somebody on the stand who claims they heard that script and as a result bought the property, otherwise it is meaningless.

MR. DEVORKIN: On that question can we approach the side bar?

THE COURT: No, proceed with your testimony.

XXX (Government Exhibit 316 received in evidence.)

(Continued on next page.)

Q Mr. Mandel, during the period of time when this script was sent out to be used were regional managers visiting the offices in which it was to be used?

A No, at that time I didn't have regional managers.

Q Was anybody visiting the offices?

A Infrequently.

Q But there were visits?

A I visited some offices primarily myself.

Q To listen to sales presentations?

A Yes.

Q Which offices did you visit?

A I spent most of my time initially in St. Louis and then I was in Tulsa. I was in Ohio.

Q Did the sales offices that you visited use the presentation that you had sent out?

A Initially in Ohio they were using a little variation to that which I changed around.

Q Then they started using it?

A While I was present they did use it.

Q Is that true of the other offices also?

A Yes, sir.

Q Showing you hwat has been marked as Government Exhibit 317 for identification, do you recognize it?

A Yes, I do.

Q How do you recognize it?

A It has my initials on the back.

Q You had a chance to look it over before?

A Yes.

Q What is Government Exhibit 317?

A It's a presentation.

Q A speaker's presentation?

A A speaker's presentation.

Q Who prepared 317?

A I did.

Q Did anybody help you?

A On this one I don't believe so.

Q Did anybody review it after you were done?

A No, sir.

Q Did you show it to anybody after you were done?

A I am sure I distributed it.

Q To whom?

A I might have given a copy to Chester Carity.

Q Was it your practice to do that?

A On certain things, yes, sir. Certain things, no.

Q On speaker's scripts?

A The other ones he worked on it with me but this one I recall specifically working on it myself.

Q After it was finished to whom did you distribute it?

A This went out to the different sales offices.

Q All over the country?

A Yes, sir.

Q When was that script prepared?

A 11/1/68.

Q Did that script replace 316?

A I am sure it replaced something else because there was another script in between. It was too long a time period to have replaced one in 1966.

Q The scripts between 316 and 317, were there any changes in substance in those scripts?

A There were always various changes.

Q In substance?

A In the overall, no. Specific information, yes.

Q What kinds of information were changed?

A It was updating, possibly government information as to population, as to what was hapening in the Albuquerque area, information of that sort.

Q For how long a period of time was Government Exhibit 317 used?

A Again, I would say in the area of approximately six months.

Q And then the same kinds of changes were made?

A Then various changes were made.

THE COURT: Where was this sent out?

THE WITNESS: This was sent out to all the various O&O offices which we had.

Q What about New York?

A New York would have been a change because there was certain information that could only be used in New York or had to be used in New York.

Q Was there any change in substance in the New York script?

A Not in substance, no.

Q Based upon reports that you got from sales offices were sales made at sales offices which were supposed to use this presentation?

MR. ARKIN: Objection, your Honor.

THE COURT: Sustained.

Q During the --

THE COURT: Reframe your question.

Q During the period of time when this script was supposed to be used did you ever attend sales dinners?

A Yes, I did.

Q Where this script was supposed to be used?

A Where it was used, yes.

Q Was the script used?

A Yes.

Q Did regional managers attend sales dinners during that period of time?

A Yes, they did.

Q For what purpose?

A To make sure that the office was performing according to instructions, making sure that the dinner parties were running smooth. They might have visited an office that there might have been some sort of problem, just a good will tour to an office, various and sundry reasons.

Q Were they also there to make sure the script was used?

MR. ARKIN: Objection.

THE COURT: Sustained.

MR. ARKIN: Strike the answer, please.

THE COURT: Strike the answer.

Q Was one of their purposes to attend sales dinners?

A To make sure that material that I had recommended, suggested to be used was being used.

Q Did you receive reports from your regional sales dinners?

A Yes, I did.

Q Did you receive reports about whether or not the sales presentation as sent out from New York was being used?

A As sent out by me, yes.

Q What were those reports?

MR. ARKIN: Objection, your Honor.

THE COURT: Sustained.

Q Did the regional managers tell you one way or another whether or not these scripts that you had sent out were being used?

MR. ARKIN: Objection.

THE COURT: Sustained.

Q You attended sales dinners during the periods of time when 316 and 317 were used, correct?

A Yes, sir.

Q Were the sales presentations reflected by 316 and 317 used at those dinners?

A Yes, sir.

Q Were sales made at those dinners that you attended?

A Sometimes yes, sometimes no.

Q But there were sales made at those dinners?

A Yes, sir.

MR. DEVORKIN: I offer 317, your Honor.

MR. ARKIN: I object to that on the same basis. There is no showing it relates to any particular sale at any particular time or any particular dinner or any particular anything.

THE COURT: It does. He says the period November 1, '68 for a period of six months it was sent out with orders to his people to use it and not vary from it. That's sufficient to let it in.

MR. ARKIN: Subject to connection.

THE COURT: Subject to connection that somebody testifies here that they heard this version.

XX (Government Exhibit 317 received in evidence.)

Q With respect to Government Exhibits 315, 316 and 317 in evidence did you attend sales dinners where those sales presentations were used?

THE COURT: He already said yes.

Q Were sales made of Rio Rancho properties at sales dinners where these presentations were made?

MR. ARKIN: Objection.

THE COURT: You are going to have to tie it up with a live witness from the witness stand that they heard this presentation.

MR. DEVORKIN: Could we approach the bench?

THE COURT: You may.

(At the side bar.)

MR. DEVORKIN: The indictment charges a scheme to defraud. The cases we believe say that the government doesn't have to prove that anybody was actually defrauded. In fact, a mail fraud case, you only have to call a witness to testify he was misled.

THE COURT: What are you worried about?

MR. DEVORKIN: The scripts do prove, and the witness has testified that they were used to make sales for Rio Rancho Estates, and they prove that. They prove the scheme to defraud. They prove certainly the defendant's intent with respect to those scripts and we think on the basis of that that you don't --

THE COURT: How can a person have to be defrauded? I am supposed to determine that a person would be defrauded by this? You have 70 people you claim who did it.

MR. DEVORKIN: I understand. One of the things the government is showing that there was a scheme to defraud from the beginning and the presentations were made of this sort throughout the period of the scheme.

THE COURT: Period, that's as far as you have gotten. Okay.

MR. DEVORKIN: We believe the authorities state that the government doesn't have to prove a particular person bought at a sales dinner for each of the tiems throughout the whole scheme to defraud.

THE COURT: You have 70 people who the Court of Appeals says you can produce. What they have to say is they were defrauded.

MR. DEVORKIN: Some of them are not going to testify --

THE COURT: You are wasting time.

MR. DEVORKIN: I want to --

THE COURT: Go back.

(In open court.)

MR. DEVORKIN: May I read Government Exhibit 316?

THE COURT: Not until you get somebody on the stand who says they heard it.

Q Mr. Mandel, showing you what's been marked as Government Exhibit 70 for identification, do you recognize it?

A Yes, I do.

Q How do you recognize it?

A I has my initials on it.

Q Have you had an opportunity to see that before?

A Yes, I did.

MR. DEVORKIN: For the record, Government Exhibit 70 is a can of film.

Q Did you see the entire film?

A Yes, I did.

Q What is Government Exhibit 70?

A It's two films, one The West Side Story and the second, "Your Golden Future".

Q Do you know if Your Golden Future is exactly the one that you used when you were with AMREP?

A It is not.

Q Are there any changes in substance in it?

MR. ARKIN: Objection, your Honor. What does "in substance" mean?

THE COURT: I don't know either.

Q What changes are you aware of?

MR. ARKIN: Objection, leading, your Honor.

THE COURT: Overruled.

Q You can answer the question.

A There were different things cut out, certain information cut out of it, certain information put in, certain things as far as the country club was not in the original one, certain other improvements to the property which were not in the initial ones.

I believe there was one or two interviews that were cut out and changed. But this is an upgraded version to show the certain development that has taken place.

Q Were there any other changes that you can recall?

A Not that I can recall offhand.

Q The script refers to a brochure called "This is My Land", is that correct?

A Yes, it does.

THE COURT: Are we talking about 70?

MR. DEVORKIN: The script, each of the scripts, the speakers' presentations.

THE COURT: 315, 316 and 317 you mean?

MR. DEVORKIN: Yes.

THE COURT: All right.

Q Showing you what has been marked as Government's Exhibit 384, do you recognize it?

A Yes, I do.

Q What is it?

A It's a brochure entitled "This is My Land".

Q What is the date of it?

A Copyrighted 1966.

Q Is that the brochure referred to in the speakers presentation?

A Yes, it is.

MR. DEVORKIN: I offer 384.

MR. ARKIN: We have no objection to this.

(Government Exhibit 384 received in evidence)

xxx

THE COURT: I gather you did not offer 70?

MR. DEVORKIN: Not at this time, your Honor.

Q Were the potential customers directed to any particular portion of this brochure, Mr. Mandel?

A Yes, they were.

Q Which portions? Can you find them?

A Pages 8 and 9.

Q The speaker directed their attention to those?

A Yes, they did.

MR. DEVORKIN: I think these have already been read from another book but I want to show the jury which pages it is.

THE COURT: All right.

Let me see that.

You say this has been read to the jury?

MR. DEVORKIN: Part of it has been read, your Honor. I think I will read part of page 9.

Reading from page 9 of Government Exhibit 384:

"Land, a case of supply and demand. In the past twenty years land values in the Albuquerque area have increased at a rapid pace averaging about twenty-five percent appreciation per year but in many cases as much as 300 to 400 percent. As a city's population continues to grow, as more people move in, as the demand for land increases land values in outlaying areas, five, ten and even fifteen miles from the heart of the city tend to increase most rapidly.

"In the past when American Realty and Petroleum Corporation announced plans for a new community prices on adjacent properties almost instantly jumped 100 to 300 percent. Here are some selected examples of land value increases in different sections of the Albuquerque area: Each one shows a series of transactions tracing the increases in value on a single piece of property over the years."

There are a number of transactions listed, one for the northwest section, two examples, one for the northwest section, another example, one for the western section, one --

MR. ARKIN: May we have no editorializing.

THE COURT: I gather he is reading.

MR. ARKIN: He is editorializing.

MR. DEVORKIN: Northwest section Example A, northwest section Example B, northwest section B, western section B, C, F. Southwest section Example G. I will

I will read a couple from that example.

"Coors Boulevard between Foothills Drive and Ekwardo Road involving 13 acres, 13 acres bought in 1946, at $ 520. 7 acres sold in 1957, $1120. Profit on $280 investment, $840. Percent of profit, 300 percent. Percent of profit per year, 300 percent. 7 acres sold in 1959, $7,000. Profit on $1120 investment, $4,880. Percent of profit, 525 percent. Percent of profit per year, 43 percent. 7 acres sold in 1962, $15,000. Profit on $7,000 investment, $8,000. Percent of profit, 114 percent. Percent of profit per year, 38 percent. Total profit since 1946, $14,720. Percent of profit, 5257 percent. Percent of profit per year, 328 percent.

"6 acres sold in 1947, $420. The profit on $420 investment, $180. Percent of profit, 75 percent. Percent of profit per year, 75 percent.

"1 acre sold in 1947, $500. Profit on $70 investment, $430. Percent of profit, 614 percent. Percent of profit per year, 614 percent.

"5 acres sold in 1961, $8,750. Profit on $350 investment, $8400. Percent of profit, 2,400 percent. Percent of profit per year, 171 percent.

"1 acre sold in 1962, $2,150. Profit on $1,750 investment, $400. Percent of profit, 23 percent. Percent of profit per year, 23 percent. Total profits since 1946, $10,580. Percent of profit, 4,408 percent. Percent of profit per year, 275 percent. Total profit on 13 acres, original investment of $520, $25,300. Percent of profit, 4,865 percent. Percent of profit per year, 270 percent.

MR. FLEMING: If your Honor please, the government is representing that those representations are false.

THE COURT: I gather so.

MR. FLEMING: I would like that representation at this time then.

MR. DEVORKIN: That is false and misleading.

THE COURT: He says they are false and misleading. I assume they are going to prove it.

MR. FLEMING: Is he saying --

MS. HYNES: If Mr. Fleming has comments can we go to the side bar?

THE COURT: He asked the question and he got the answer. The answer is --

MR. FLEMING: I got a double answer.

THE COURT: You got a straight answer. The answer is yes that is what they are going to prove. If they don't prove it the document goes out and the testimony too.

MR. FLEMING: I would like to reserve my right to a stronger remedy if they don't prove it.

MR. DEVORKIN: We are going to prove what the statute requires.

THE COURT: Why don't you go ahead.

Q Showing you what has been marked as Government Exhibit 271 for identification, do you recognize that?

A Yes, I do.

Q What is it?

A It's a printed piece showing Albuquerque.

Q Where was it used, if anywhere?

A It was used at dinner parties.

Q What was done with it, if anything?

A It was on a table with literature.

Q What table?

A The dinner table.

THE COURT: Let me see that.

Okay, thank you.

Q At the table where the customers were seated?

A Yes.

Q Did you see that at dinner parties you attended?

A Yes.

Q Was that one of the pieces that you sent out or had sent out to officers?

A Yes.

MR. DEVORKIN: I offer 271.

MR. ARKIN: Would you like to hand this back to the witness so I might voir dire him briefly, Mr. Devorkin.

VOIR DIRE EXAMINATION

BY MR. ARKIN:

Q Mr. Mandel, do you recall when it was this particular document was used?

A Exactly at what time, I do not, sir.

T3A pm

Q Does it refresh your recollection at all that it says at the very top of that document that you should obtain a HUD property report from the developer immediately before signing anything.

Does that help you pinpoint when it was used and how it was used?

A No, because I believe it was used before that caption was put on there.

Q It was used before that caption --

THE COURT: Give us a rough idea as to when it was used.

THE WITNESS: It was probably used, I would say, around 1966, in that area, '67.

Q If you say it was used before that caption was put upon it, therefore this particular document was not used at that time;isn't that right?

A It was used without this caption upon it.

Q Not the same document?

A Yes.

MR. DEVORKIN: I object, your Honor.

THE COURT: You are offering it for a period of time, I assume.

MR. DEVORKIN: I agree.

THE COURT: He is trying to find out what the period of time is.

You have not had it indicated. He is entitled to find out.

BY MR. ARKIN:

Q That caption refers to HUD property reports and says you should read it before you sign anything.

Do you agree with that, Mr. Mandel?

A Yes, it does.

Q Do you recall when HUD property reports came into existence, what year?

A I believe it was around 1969, '68, '69, that area.

Q So that this particular document with the caption on it as it is could not have been used in 1966, do you agree with that?

A It could not have been used.

MR. ARKIN: I object.

THE COURT: Overruled. It can come in without the caption as used in 1966 and 1967 and used from 1968 on. That is what the witness said with the caption.

MR. ARKIN: Subject to connection, too, I take it, your Honor.

THE COURT: Yes.

xx (Government Exhibit 271 received

in evidence)

BY MR. DEVORKIN:

Q How long was 271 used, Mr. Mandel, in its present form with the caption?

A It was used at various times. I know there were times when we did take it off the dinner tables and then we put it back.

Q Up until what period of time was it still being used on occasion?

A I don't recall for how long after we had that legend put on there that we used it.

Q Did you stop using it after the legend was put on?

A I believe after that time we did stop using it.

Q Were there sales made at dinners you attended where this was used?

A To the best of my recollection I would have to say yes.

MR. DEVORKIN: May I just show this to the jury, your Honor?

THE COURT: Yes.

Q Mr. Mandel, showing you what has been marked as Government's Exhibit 347-F for identification, do you recognize it?

A Yes, I do.

Q What is it?

A It's a survey used at dinner parties.

Q When did it first begin to be used?

A This particular one I believe around 1966, '67.

Q How long was it used?

A It was updated, it was changed at various times.

Q How long was that document used?

A This particular one used? It might have been used for a year. I couldn't answer that.

Q Was this send out to offices to use?

A Yes, it was.

Q Were they given any instructions with respect to this particular document?

A They were told how to use it, yes.

Q What were they told to do?

A That when people attended a dinner party, they ask to have the people fill this information out.

Q Who was to fill it out?

A The customer, the potential customer.

Q Did you attend sales dinners when this document was used?

A Yes, I did.

Q Were sales made at those dinners?

A Yes, they were.

Q Were the documents usually completed, filled out completely?

A Not all the time. There were always things that were left off.

MR. DEVORKIN: I offer 347-F in evidence.

MR. ARKIN: Just one question, your Honor.

VOIR DIRE EXAMINATION

VX BY MR. ARKIN:

Q Was 347-F mandatorily used by each salesman with respect to each customer?

A No, it was not.

MR. ARKIN: Your Honor, our objections only goes as we specified before to your Honor.

THE COURT: Same ruling.

(Government Exhibit 347-F received in evidence) xxx

MR. DEVORKIN: May I read this, your Honor, to the jury?

THE COURT: No. The witness says it wasn't mandatorily used. I don't know if it was used on one person or 48,000 people.

BY MR. DEVORKIN:

Q Were salesmen instructed to fill this out?

A Not all salesmen, as I mentioned to you once before, that it was used for a stronger salesman, one with more experience did not have to use it. It was used strictly to aid a salesman to get into a conversation with the potential customer.

Q But there were instructions given with respect to its use, correct?

A It was not mandatory for all salespeople to use it.

Q That is not my question, Mr. Mandel.

Were instructions given by AMREP to use this document?

A Instructions were given to me to the managers of the office saying to use it on sales people who they felt needed the help.

Q To help those sales people make sales?

A Yes.

MR. ARKIN: Objection. Argumentative and suggestive.

THE COURT: Let him finish his answer.

A Not all salesmen were instructed to use it nor did they.

THE COURT: In other words, this is different from the other material he sent out. The other material he said they had to use it and couldn't deviate from it.

Q Was this document part of the sales manual previously mentioned?

A It was in the sales manual, yes.

MR. FLEMING: Your Honor, I object to the mischaracterization of testimony to make a sale. I understand what the witness said was to get into a conversation with a potential purchaser.

THE COURT: That is what he said. That is what the witness said.

MR. FLEMING: Mr. Devorkin used other words that I object to and ask they be stricken.

THE COURT: They are stricken.

Q Mr. Mandel, what was the purpose of questions 6 through 11?

MR. ARKIN: Objection, your Honor.

THE COURT: Overruled.

A It was just to give a little insight if a person has ever made an investment, if a person had a plan for the future, what age they would like to retire, if they have ever been out to New Mexico or the southwest to find out if they were familiar with the area.

Q What was the purpose of Question 10?

A Again basically to aid the salesman to what one could possibly afford.

Q Afford for what?

A For Rio Rancho Estates.

Q For what purpose, what do you mean afford?

A To buy in land at Rio Rancho Estates.

MR. DEVORKIN: May I read Questions 10 and 11 to the jury, your Honor?

THE COURT: No.

MR. DEVORKIN: May I show this document to them?

THE COURT: Next question. You are forcing something that the witness keeps telling you is not true.

Next question.

Q Mr. Mandel, how did the sales dinner presentations that you heard outside of New York compare to those in New York?

A They were similar in all respects.

Q I am sorry.

A They were similar.

Q Did Mr. Zaknich attend any such sales dinners for you when he worked for you?

A Yes, he did.

Q How frequently?

A Almost every night.

Q For what purpose?

A To make sure that they were being run per my instructions, to make sure what was being said was true, to see if the office needed any help.

Q Did you receive reports from Mr. Zaknich?

A Yes, I did.

Q Did he report to you about the use of sales presentation scripts?

A There were times that he did.

Q Was he given any instructions about what to do if a sales presentation script was not being followed?

A Yes, he was.

Q What instructions did he have?

A Either fire the manager or make sure that it was corrected immediately depending on what was being said.

Q How frequently did it occur that you fired a manager for not using a sales presentation, a script that was sent out?

A I believe I fired maybe six or seven managers because of that.

Q Over how many years?

A Over a two year period.

Q That is for all of the offices in the United States?

A That is just managers, not salesmen.

Q That is for all of the offices in the United STates?

A Yes, for that reason.

THE COURT: You say for all of the offices in the United States. How many offices were there in the United States?

THE WITNESS: There was approximately fifty offices to the best of my recollection.

Q Were there other people like Mr. Zaknich visiting sales dinners?

A Yes, there were.

Q Would they make the same kind of reports to you?

A They would make it generally to Mr. Zaknich who would then make it to me.

Q Were the presentations at sales dinners ever recorded electronically?

A Yes, they were.

Q For what purpose?

A Again to either find out if what I told them to do was being done, any deviating. It was a way of my policing a sales force.

Q How did the recordings come to be made?

A With a tape recorder.

Q Were instructions sent along to make the recordings?

A Periodically, yes, I would ask an office.

Q How would you go about doing that?

A I would get on the phone and either speak to Mr. Zaknich or get on the phone and speak directly to the manager of the office and ask him to make a recording of his next dinner.

Q Then what would happen?

A They would forward it to me.

Q What, the tape?

A The tape.

Q What would you do?

A I would listen to it.

Q What would happen then?

A Depending on what I heard, if I heard something I didn't like, either I would call up Mr. Zaknich or I would call directly to the manager of the office and make sure it was corrected.

Q Were the dinner presentations you have described a regularly conducted business activity of AMREP?

A Yes, they were.

Q Was it the regular practice of AMREP in the branch offices to tape these dinners periodically during the time you worked for AMREP?

A Yes.

Q Was it the regular practice of AMREP to have these tapes sent to the New York office from time to time?

A Sent to me, yes.

Q You reviewed these tapes?

A Yes.

Q Did anybody else review these tapes?

A Not to my knowledge.

d t3a

Q Did Mr. Zaknich listen to the tapes?

A He might have listened after I called him in to go over something. Generally not.

Q Do you recall that happening?

A It happened once that I recall.

Q Did Mr. Carity ever listen to the tapes?

A I don't recall him listening to them. He listened to a tape that I made, that I personally made of a sales meeting.

Q A tape you made when you were at a dinner?

A A sales meeting, I listened to a tape of.

Q What do you mean a sales meeting?

A I held a sales meeting which I taped.

Q Where was that meeting?

A In Tulsa, Oklahoma.

Q What was the purpose of your holding the sales meeting?

A To motivate the sales force and to train them.

Q What was the purpose of your playing the tape for Mr. Carity.

A I just wanted his comments as to how I came across because in those days I didn't have much experience in these kinds of presentations.

Q Did he give you his comments?

A He thought it was very good. He thought a couple of areas I deveoped too long on certain topics.

Q When you say the purpose was to motivate the sales personnel, what do you mean and how did you motivate them?

A You motivate different ways. You can motivate possibly by having a contest. You can motivate by instilling confidence, enthusiasm, getting them all charged up, letting them feel like they are sales people, that they can go out and do a job, the pride of the product.

Q What do you mean by a contest?

A You might have a sales contest. I might go into an office and the first salesman that has a deal I might give him $10, $20. The most effective way of motivating the sales force was by product knowledge. The pride of the product, which I tried to instill into sales people.

Q How often did you hold these sales meetings?

A Generally when I went into an office I would hold some sort of a sales meeting. I did hold it with regional men. I held it at various offices when I did go in to visit.

Q Did regional managers hold similar sales meetings?

A Yes, sir.

Q Was that on your instructions?

A Yes, sir.

Q How did the presentation you heard on these tapes compare with the ones at dinners that you had attended?

A Mostly they were the same.

Q Who at AMREP maintained possession of these tapes?

A I did.

Q Was it your regular practice to keep the tapes?

A Yes, it was.

Q Where were the tapes kept?

A They were kept in a credenza right behind my desk.

Q When you left AMREP in 1970, what happened to the tapes?

A I don't know.

Q Did you leave them behind?

A Yes, I did.

Q Who took your place at AMREP?

A Peter Zaknich.

XXX (Government's Exhibit 671-A marked for identification.)

X

MR. DEVORKIN: And 671-B.

(Government's Exhibit 671-B marked for identification.)

Q Mr. Mandel, showing you Government's Exhibit 671-A for identification, which is a cardboard box with a reel of tape in it, recording tape, would you take a look at the reel of recording tape and see if you recognize it.

A Yes, I do.

Q How do you recognize it?

A It bears my initials on it.

Q Have you had a chance to listen to that before this afternoon?

A Yes, I did.

Q Did you listen to the entire tape?

A Yes.

Q Showing you Government's Exhibit 671-B for identification, another cardboard box with a reel of recording tape in it, will you look at the reel of recording tape?

A Yes.

Q Do you recognize it?

A Yes.

Q How?

A It has my initials on it.

Q Did you have a chance to listen to it before testifying this afternoon?

A Yes.

Q The entire tape?

A Yes.

Q On what date did you listen to it?

A The 9th.

Q That was yesterday?

A Yes.

Q What are Government Exhibits 671-A and B?

A Sales presentation at BTG Realty.

Q That was in Buffalo, New York?

A Yes, it was.

Q Do you recognize any of the voices on there?

A I recognize one voice.

Q Whose voice is that?

A Sid Hollander.

Q Who is Sid Hollander?

A Sid Hollander is a regional manager.

Q Did he work for you?

A Yes, he did.

Q During what period of time?

A I believe around 1968, in that area, '67, '68.

Q What is Mr. Hollander doing on these tapes, if anything?

A He is giving a part of a presentation.

Q A sales dinner presentation?

A Yes.

Q Does what you have heard on Government's Exhibit 671-A and B accurately and fairly reflect sales dinner presentations during your time with AMREP Corporation?

A Yes, it does.

Q Including the presentations in New York City?

A Yes, it does.

MR. DEVORKIN: I offer 671-A and B.

MR. ARKIN: May I see them, Mr. Devorkin?

A brief voir dire, your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. ARKIN:

Q Mr. Mandel, you said your initials were on these tapes, is that correct?

A Yes, sir.

Q When did you put your initials on these tapes?

A Yesterday, sir.

Q You haven't seen these tapes since you left the company some five years ago?

A Right.

Q While you were with the company they were kept in a credenza?

A Yes, they were.

Q You don't know what happened to them after you left the company?

A No, I do not.

Q The company had no way or means of logging these particular tapes when they came in to you?

A They were never logged in.

Q There were no records or entries made on any document to reflect the receipt of any particular tape?

A No, sir.

MR. ARKIN: Your Honor, we object on the basis of, one, chain of custody and, two, it is not a business record.

THE COURT: Overruled.

XXX (Government's Exhibit 671-A and B received in evidence.)

MR. DEVORKIN: Your Honor, I would like to play 671-A and B.

THE COURT: No.

MR. DEVORKIN: Mrs. Henry has already testified about a sales dinner presentation in New York.

THE COURT: You should have done this before you put her on. You have a number more to go. You can pick them up with somebody else.

MR. DEVORKIN: The witness has just identified this as a sales presentation, your Honor, that accurately refelcts the sales presentations in New York.

THE COURT: Mrs. Henry could testify, after she heard that this was presented to her, fine.

I would assume that you would have played these tapes and shown the brochures to all of your so-called victim witnesses before they took the stand and have them initial them, the same as you have had this gentleman initial those tapes.

When you have done that, he has proven that this came out of AMREP and circulated, but you have got to ask the witness on the stand who bought the property allegedly because of misrepresentations appearing on those tapes to say that, yes, those are the tapes he heard. That's the presentation she heard. That's perfectly clear.

Next question.

BY MR. DEVORKIN:

Q Did AMREP Corporation conduct periodic meetings of employees involved in sales?

A The managers, regional managers, periodically, yes.

Q Who attended those meetings?

A The regional managers, office managers, myself, a few times Dan Friedman did just to update people as to different forms, maybe new forms that we were using or if there were any problems with any of the forms that we were having coming from specific offices.

Q What was the purpose of those meetings?

A Again just to generate enthusiasm, to update the managers as to any new developments at the property.

Q Did you talk about ways to improve sales?

A We talked about ways of improving sales, yes.

MR. ARKIN: Excuse me, your Honor, could the witness be asked to speak up just a bit because one of my clients who sits behind me is unable to hear him.

THE COURT: Raise your voice a little louder.

MR. ARKIN: Thank you.

Q Were there any discussions of price increased on Rio Rancho properties?

A There was once or twice, yes.

Q When there were price increases scheduled, did you talk about them at such meetings?

A If I was having a meeting at that time, I would.

Q How often did you have these meetings?

A I might have them twice, three times a year.

MR. DEVORKIN: May I just have a moment, your Honor?

(Pause.)

Q Do you recall testifying before about monthly sales reports?

A Pardon me?

Q Do you recall testifying before about monthly sales reports?

A Yes, I do.

Q Those reports were sent to whom beside the sales office involved?

A They were sent to I believe the regional manager, they were sent to Dan Friedman, Howard Friedman and Chester Carity.

Q Did Chester Carity ever send out such monthly reports to sales offices?

A I believe initially the first sales reports either he sent it out by himself or he and I sent it out.

Q Showing you, first, Government's Exhibit 358 for identification -- let me show you a number of them, Mr. Mandel, 358, 359, 360, 361, 362, 363. Would you examine those?

(Pause.)

Q Have you had a chance to look at all of them?

A Yes, I did.

Q Do you recognize any of these?

A Yes, I do.

Q What are they?

A Monthly statistical reports that were sent to the St. Louis office.

Q Can you actually remember sending or receiving any of these particular reports?

A I can't remember sending because that's not my signature on the ones that show my name on it.

Q Can you remember receiving them?

A Most of them are from me.

Q Some of them are cc to you, carbon copy to you, correct?

A Yes.

Q Are you saying that you don't actually remember this particular report?

A I don't remember this particular report itself.

Q Did you send out reports like these?

A Yes, I did.

Q During this period of time?

A Yes.

Q To this particular office in St. Louis?

A Yes.

Q Do these documents, 358 through 363 for identification accurately and fairly reflect the kinds of monthly sales reports you have described?

A Yes.

Q And the kinds of letters that were sent out to sales offices with the sales report?

A Yes.

MR. DEVORKIN: I offer 358 through 363.

THE COURT: While the lawyers are looking at those papers we will have a short recess.

(Recess.)

(Continued on next page.)

(In open court - jury present.)

MR. DEVORKIN: May I proceed, your Honor?

THE COURT: Yes.

MR. DEVORKIN: I have offered 358 through 363.

MR. FLEMING: We object to them on relevance, your Honor.

MR. ARKIN: We join in that objection, your Honor.

THE COURT: Let me see them.

MR. FLEMING: If you read one you have read them all.

MR. DEVORKIN: There are different senders and receivers, your Honor.

THE COURT: All right. Come up to the bench.

(At the side bar.)

THE COURT: What's the relevance of this?

MR. DEVORKIN: Your Honor, this one is from Mr. Mandel with copies to some of the defendants, Howard Friedman, Dan Friedman and Chester Carity. There is another one --

THE COURT: Give me this one. Please tell me about that one.

MR. DEVORKIN: What is happening here is the officers of AMREP Corporation are doing two things. One, they are motivating their sales officers to keep selling and keep up the good job. At times they are telling them to do better and they are keeping control over those offices and this proves that these defendants were informed of that and involved in the business of running and motivating --

THE COURT: What does that have to do with the scheme to defraud?

MR. DEVORKIN: We have to prove the defendants had knowledge and control of the scheme. The only way we can prove it is to show what they did. We have to prove that the defendants knew what was going on, had control of their operation, that it wasn't just people under no control doing things they wanted to do and this shows the defendant's active, daily involvement with important matters of sales operations. Each one of them shows that.

THE COURT: 358 through 363?

MR. DEVORKIN: Yes.

THE COURT: Where is 359 or isn't there one?

MR. DEVORKIN: There is one.

THE COURT: I have it, I am sorry.

MR. DEVORKIN: It shows the defendant's knowledge and involvement with individual salesmen they are getting reports about. They are getting reports about, I believe, how many sales that salesman made. It may even show, I haven't looked at it precisely, it may show individual customers were buying more than one lot and the defendants knew that. It gets them right down to the nitty-gritty of running this business.

THE COURT: This is one from Gerty.

MR. FLEMING: It doesn't have anything to do with the scheme to defraud.

THE COURT: But it shows knowledge of the sale scheme. They can't say we didn't know what was going on. This is the great point you were making, they may be out in left field and these guys are doing this to them without their knowledge.

MR. FLEMING: That's my point. All this shows is they know sales are being made.

THE COURT: And percentages and comparisons day to day or month to month.

MR. FLEMING: But knowing --

THE COURT: Objection overruled.

MS. HYNES: May I make a correction on the record, please. When Mr. Devorkin was offering the "This is my Land" pamphlet, I think 384, and he read the example himself, your Honor, Mr. Fleming jumped up and said, "Is the government going to prove that that is false" and your Honor said, "I assume" --

THE COURT: Sure.

MS. HYNES: Let me correct the record.

MR. DEVORKIN: I responded we would prove it's false and misleading and a bit later I said we would prove it's misleading.

THE COURT: I don't know what misleading means. It can stay in but unless you prove that those figures are false it goes out.

MS. HYNES: Let me address --

THE COURT: That's the only point of reading that to the jury.

MS. HYNES: Can I address myself to the law on this. We submitted in our trial brief the cases that begin on page 22 that stand for the proposition, beginning with the Durland case from the Supreme Court, that a statement need not be actually false but if it is misleading which is a question of fact --

THE COURT: I don't know what you mean by misleading. The point of those examples in that pamphlet which were referred to from the speaker's podium at the front of the room and shown to prospective customers and their specific attention dawn to them were and will be tied in with the speaker's presentation when they are read to the jury that those were -- those examples were given for the purpose of leading prospective purchasers to believe that they could expect similar returns on an investment in land that they were being asked to purchase and we would argue that is misleading.

THE COURT: Why?

MS. HYNES: Because that was not the return that any of the purchasers during the period of time were getting on the investment. There was no resale market. This land did not increase in value by the percentages of the examples they were given. There is a specific reference --

THE COURT: I still say you have to prove to me that those are false documents.

MS. HYNES: Under the cases we do not.

THE COURT: I made a ruling.

(Continued on next page.)

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(In open court)

(Government Exhibits 358 through 363 received in evidence)

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THE COURT: These are called monthly sales reports?

THE WITNESS: Monthly statistical reports.

THE COURT: Go ahead.

MR. DEVORKIN: May I read one or two of these?

THE COURT: Yes.

MR. DEVORKIN: Government Exhibit 358 in evidence is to Peter Zaknich and Peter Boucher rom Chester Carity and Duke Mandel, dated April 8, 1968. Re: RMT Realty Corp., Missouri, March Statistical Report.

"Gentlemen: Congratulations, a second successful month of tremendous improvement. You better watch out or at this rate you are liable to become the top office in the country. Your average number of RSVP's is still not high enough.

"You will have to analyze the responses by restaurant and we will have analyzed restaurants in areas miled. The weakest 25 percent of restaurants and/or the areas mailed must be eliminated and you got to find new restaurants and new areas of a type similar to the ones that pulled good RSVP counts.

"Since the month of March was the last month before the price increase, I would like to know why there were so few HSO's and referrals invited. I also notice that although your closing rate on HSO sales was better than your previous month it was still only 12 out of 33 which is not quite good enough. Your referral sales of 8 out of 19 were also not good enough. On both of the above it should be one out of two.

"I also notice your down payment percentage slipped to 6.3 percent. Watch it, this is going too low. Your average sale price of $3357 is much better. Keep it going. Before our price increase the national average was $3500 and after the price increase it should be higher. Your closing rate of 21 percent is great.

"It looks like you have the nucleus of a good crew. The closing rates of your better men are excellent but don't make the same mistake of some of our other offices do, don't relax. Keep interviewing men and hire a few other good ones.

"My last sentence, a good job."

Carbon copy to Howard Mandel, Dan Friedman, Howard Friedman.

There is a statistical report attached to it giving various figures.

THE COURT: Limit yourself to reading one more.

MR. DEVORKIN: This is dated December 17, 1968 to JOhn Fox from Duke Mandel, re: RMT Realty Corp., St. Louis, Missouri, month of September 1968. Carbon copy to Chester Carity, Dan Friedman, Howard Friedman, Pete Zaknich.

"John: What happened? Your sales volume dropped from $102,785 to $88,235. This is not what you projected. You had a drop in sales price from $3,212 to $3,152. This should be above $3500. You had no referral sales and two HSO sales of 27 attending. The percentage should be one out of two on both.

"Your boost in referral attendance drop indicates you have permitted your men to relax. Only two of your men attended all twenty parties. You had 23 overflow units indicating a recruitment program is required.

"Keep interviewing men and get a few more good ones to replace your weak and part-time salesmen. Your closing rate of 13 percent is still short of the national average of 15 percent. You are reducing your cost per sale.

"John, you have too much talent to be satisfied with this kind of results. I have ever confidence that you will show dramatic improvement. Write me regarding your immediate plans for the future."

Then there is another set of statistical figures including one entitled salesman performance.

That that I just read from was Government Exhibit 361.

Q Mr. Mandel, how many sales dinners was a sales office supposed to schedule each week?

A Approximately five.

Q Is that five for the whole week?

A Yes.

Q One a night?

A Yes, one a night.

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Q How many sales teams would the sales office have?

A It depended on the office. It depended on the area. It depended on availability of sales people, availability of mailing names.

Q What would the range be?

A Most would have one team. Some would have two teams. Most offices had one team.

Q So that every office in the country was supposed to be holding a dinner every night of the week?

A Except the weekends, yes.

Q Do you know how many sales teams there were in ATC?

A I believe it was around four, if I am not mistaken.

Q So they held four dinners a night?

A Yes, sir.

Q In four separate restaurants?

A Yes, sir.

Q The exhibits which I just read from refer to an HSO, what is that?

A A homesite owner.

Q They were invited back to sales dinners?

A Yes, they were.

Q For what purpose?

A In a lot of cases these were people who had already visited the property --

Q Mr. Mandel, what was the purpose for inviting them back to the dinner?

THE COURT: He is giving you the answer.

MR. DEVORKIN: I am sorry, your Honor?

THE COURT: He is giving you the answer. Don't cut him off.

Q What was the purpose?

A In most cases they were people who had visited the property, were happy with what they saw --

MR. DEVORKIN: I object to that, your Honor.

THE COURT: Overruled.

MR. DEVORKIN: I don't think it is responsive to the question.

THE COURT: You said the purpose and he is now giving you the purpose. They liked it so much they were going to be used to sell other people. That was the purpose of inviting them back.

That is the answer. You may not like it.

Q Please continue, Mr. Mandel.

A That was the purpose.

Q What was supposed to be done with the homesite owner at the dinner?

A These were people who were happy, these were people who we wanted to bring friends, in case any of the other people at the dinner might have some questions to ask, they would ask a homesite owner or property owner.

Q Was one of the purposes to sell them more property?

A At different times depending if they felt they could afford more property.

Q Was one of the purposes for inviting them back to sell them more property?

MR. ARKIN: Objection, your Honor. He has asked the question.

THE COURT: Sustained.

Q In Government's Exhibit 358 in evidence, a memo from you and Chester Carity, dated April 11, 1968, you state:

"I also noticed that although your closing rate on HSO sales was better than your previous month, it was still only 12 out of 33, which is not quite good enough."

What did you mean by "closing rate on HSO sales"?

A That would be the number of homesite owners who attended versus the number who were sold additional property.

Q Closing rate means 33 percent -- I am sorry, 12 out of 33 means that only 12 out of the 33 HSO's attending bought more property?

A Yes.

Q Was there a preferred average for that closing rate?

A It was a preferred average which I came up with, I felt it should be one out of two, one out of three, in that area.

Q That means one out of two property owners who attended another dinner should buy another piece of property?

A Yes.

Q Mr. Mandel, were price increases used in any way in sales presentations?

THE COURT: What was that again?

Q Were price increases used in any way in sales presentations?

A Yes, prior to a price increase.

Q What would happen?

A Well, it was stated that within a certain period of time the prices would be going up.

Q Was anything else said?

A It was said that this was the time to do something before the price increase, if someone wanted to buy property.

Q Were sales offices given any instructions with respect to using price increases like that?

A They were told that they should announce that there is a price increase and they should get out as many people as they can. They should get out property owners who have been there, they should get out referrals of these property owners.

Q For what purpose?

A To sell additional property to or to sell property to.

Q Generally speaking, were sales just before price increases higher or lower?

A Higher.

Q I believe you testified that Leonard Geller was a manager of ATC Realty along with Peter Miller?

A Yes.

Q Who did Leonard Geller report to?

A Me.

Q Anyone else?

A I was his immediate supervisor.

Q Did he report to anybody else beside yourself?

A He reported at times to Dan Friedman in the area of forms and things, if there were certain problems, monetary problems as far as petty cash, things in those areas, but pertaining to sales he reported directly to me.

Q How successful an office was ATC Realty compared to your other offices?

A It was successful.

Q Did there come a time when it became the largest selling office?

A Yes, it did.

Q Do you recall what its sales volume was at the peak when you were with the company?

A I don't recall exactly, but it was maybe four or $5 million a year.

Q Did there come a time when Leonard Geller got in some trouble with the State of New York?

MR. ARKIN: Objection, your Honor.

THE COURT: Sustained.

MR. DEVORKIN: Can I make an offer of proof, your Honor?

THE COURT: Yes.

(At the side bar)

THE COURT: Go ahead.

MR. DEVORKIN: The government's offer of proof is this:

There did come a time after Mr. Geller was hired when the Secretary of the State of New York found out that Mr. Geller had been convicted for securities fraud. This would have disqualified him to hold a real estate license, in effect disqualified him from being a manager of ATC Realty for AMREP Corporation.

THE COURT: Yes.

MR. DEVORKIN: It was important enough to AMREP Corporation and the defendants to keep Mr. Geller in that capacity, despite their knowledge that he had a securities fraud violation, that Mr. Mandel and Mr. Daniel Friedman went down to the Secretary of State of New York's office and gave testimony under oath on behalf of Mr. Geller's reputation and good character and performance for them.

THE COURT: Yes.

MR. DEVORKIN: I think that makes it relevant to this case.

MR. FLEMING: No way.

THE COURT: Objection sustained.

(In open court)

BY MR. DEVORKIN:

Q Mr. Mandel, did you ever attend --

MR. ARKIN: Your Honor, may that question be stricken?

THE COURT: He has asked a question. Objection was made and the objection was sustained.

MR. ARKIN: Thank you, your Honor.

THE COURT: Next question.

Q Did you ever attend sales presentations given by Mr. Geller?

A Yes, I did.

Q How frequently?

A There was a time when I was attending them, oh, I would say possibly about three times a week or four times, in that range.

Q Was he using the sales presentation reflected by the script that you identified?

A Yes, sir.

Q Did he do that in all of the presentations you heard?

A Yes, sir.

Q Do you know how often Mr. Geller gave sales presentations?

A There was a point where he didn't give them, but there was a certain point when he would give them every night.

Q Did you ever attend sales presentations by Mr. Peter Miller?

A Yes, sir.

Q Did his presentations use the script that you have identified?

A Yes, sir.

Q How often did you hear Mr.Miller's presentation?

A I would say a minimum of once a week.

Q How frequently did Mr. Miller give sales presentations?

A Initially he gave them every night and then he no longer gave them.

Q How frequently -- for how long a period of time did he continue to give sales presentations?

A I would say a period of a maximum of maybe six months.

Q Then he stopped completely?

THE COURT: You do this all the time. I have no idea whether the six months is 1966 or 1975.

Q When was --

THE COURT: Please, when you get your witness to testify as to a time, have it fixed so we know what he is talking about.

Q When did Mr. Miller give those presentations, in what year?

A I believe it was around 1968. I can't be certain.

Q Did he cease completely at the end of the six months?

A He would give them once in a while, but not on a regular basis.

Q When did Mr. Geller give his presentation?

A Approximately the same time.

Q Did he also give them once a week after that?

A I didn't say once a week.

THE COURT: He never said once a week.

MR. DEVORKIN: I am sorry.

THE COURT: He also gave htem once a week assuming that Miller gave them once a week.

MR. DEVORKIN: I thought the witness said that Mr. Miller slowed down to once a week.

THE COURT: Not Miller.

MR. DEVORKIN: Let me be clear.

Q Did Mr. Miller stop completely giving sales presentations?

A No, he gave them infrequently, once in a while.

Q What about Mr. Geller?

A The same with Mr. Geller.

Q Mr. Mandel, in your work for AMREP Corporation, I gather your main responsibilities with AMREP were in the sales end of the business and not the financial end, is that correct?

A That is correct.

Q Based on your six or seven years experience in land sales with AMREP, what was the primary inducement to the customer used by AMREP to sell land at Rio Rancho?

MR. FLEMING: Objection.

A Long term investment.

MR. DEVORKIN: May the answer stand, your Honor?

MR. FLEMING: I objected.

THE COURT: Overruled.

Q What do you mean by long term?

A A minimum of from seven to ten years.

Q Over what period of time was it conveyed to the customer that this was a good financial investment?

MR. ARKIN: I don't understand the question, your Honor. I object.

THE COURT: Neither do I. Reframe it.

Q How did you go about showing the customer-- withdrawn.

Did you show the customer that his investment had increased in value?

MR. ARKIN: Objection, if your Honor please.

THE COURT: Ask him what he did.

Q Based on the sales presentations, you have described and your experience with the company, Mr. Mandel, how frequently, if at all, did you show the customer that there was an increase on his investment?

MR. ARKIN: Objection, if your Honor please.

THE COURT: Sustained.

Q Did you make any representations to the customer about increases in his investment value?

MR. ARKIN: Objection.

THE COURT: Overruled. He is asking him whether he ever made a representation. He can answer yes or no.

MR. ARKIN: All right, your Honor.

Q I am sorry, what was the answer?

A Yes, there were times.

Q What would you represent to the customers?

A We would show what the price was when he initially bought it and what the current price at the time that he was being shown was.

THE COURT: What do you mean by price?

THE WITNESS: The price of the piece of property which he purchased from us.

THE COURT: It couldn't be the property he purchased. You mean the price that similar property was then selling for, don't you?

THE WITNESS: No, the question was asked, the property owned who had originally purchased property, he purchased it at a certain price.

THE COURT: Right.

THE WITNESS: Say 1895. Then over a period of time this individual would be shown what the property was then selling for, a similar piece of property.

THE COURT: That is what I said, a similar piece of property.

That means what you were selling a similar piece of property to somebody else?

THE WITNESS: Yes, sir.

THE COURT: All right.

Q Were sales offices instructed to use that approach?

A They weren't instructed in a memor or any sort of a form. No, they were not.

Q How were they instructed?

A They were instructed --

MR. ARKIN: If your Honor please, he said they were not instructed.

THE COURT: In a certain form leaving open that there was an instruction other than the type of form he specified.

He is now being asked what that form was.

MR. ARKIN: If any.

THE COURT: Well, the whole point of his answer raised the inference there was.

THE WITNESS: The only times that they were told were times that would be prior to a price increase. When a homesite owner came out to a party was the primary time to show the way the prices were going up.

Q And how they had gone up in the past, is that correct?

A Over the period, yes.

Q Was anything at all said about other land transactions in Albuquerque?

A To the property owner?

Q Yes, or to any customers.

A No.

Q Mr. Mandel, were property owners or customers shown increasing land values in land sales in Albuquerque?

A The only thing they were ever showed was brought out from "This is My Land".

Q What was the purpose of showing them that?

A The only purpose of showing them that was showing them that Albuquerque was a dynamic area where values have been increasing and the government was projecting on population growth, economic growth, that it should still continue the same way.

Q Mr. Mandel, does anything on page 9 have anything to do with the government statistics? Yes or no?

A No.

Q So what was page 9 used for at the dinners?

A I just told you what it was used for.

Q To show that Albuquerque was growing in land sales?

A To show that the Albuquerque area was a dynamic area based on the growth of real estate values, which was continuously rising.

Q What was the purpose of showing them increasingl rising real estate values in Albuquerque?

A To show that it was a dynamic area which was growing.

Q What was the purpose of that in connection with Rio Rancho Estates?

A To show them that with the overflow of people coming into the area that Rio Rancho Estates was in a good strategic position.

Q For what?

A For people coming into the area, people moving out to the southwest and showing what has happened based on projections of statistics, that the southwest was the fastest growing area in the United States.

Q What was supposed to happen at Rio Rancho Estates?

A That with growth development and if the projections followed through and people still kept moving out there, population-wise and all, that Rio Rancho was going to increase in value.

Q In investment value?

A Investment value.

Q What is the leverage approach, Mr. Mandel?

A You are talking about financial leverage?

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Q Yes.

A Financial leverage means a small amount of money to control a larger sum of money.

Q Was there any representations with respect to that to customers?

A It was pointed out to people that in real estate, the type of investment that real estate could be, was where you put up a certain amount of money to control a much larger amount of money, not where you have toput up dollar for dollar.

Q Explain what you mean by that.

A In other words, if you went to the bank and you deposited money in the bank, you are going to get interest on what you put into the bank.

Q Continue. I don't understand what you mean.

MR. FLEMING: I object to that.

THE COURT: Sustained.

MR. FLEMING: I ask that that comment be stricken.

THE COURT: Strike the comment.

Q Was that comparison made for a customer at a Rio Rancho dinner?

A It would show the type, when we pointed out financial leverage, it was to show how it was used in real estate versus how investments are used in other areas.

Q What did you point out to them?

A That Rio Rancho Estates when they made a down payment, their down payment controlled a piece of property that was worth more.

Q Woth more than what?

A Than the down payment.

Q Was that compared to other investment opportunities?

A It was compared to show that in other investment opportunities you have to put up dollar for dollar to get some sort of a return on it whereas in real estate you do not have to.

Q What other investment opportunities did you compare to it?

A To the bank, to the stock market.

Q What was the purpose of making those comparisons?

A To show what leverage was. To show that with real estate you had leverage. If you wanted to control a piece of property worth $2,000, you did not have to put up $2,000, but you might have to put up only $200 to control that piece of property.

Q Did that include showing that Rio Rancho was a better investment than those other opportunities?

A No, it didn't show that it was a better investment per se. It was just showed that you were able to control it for not as much money.

Q Was one of the purposes to get the customer to think that Rio Rancho was a better investment opportunity?

A Was to think that real estate was a better opportunity.

Q And therefore that Rio Rancho was a better opportunity?

MR. ARKIN: Objection, your Honor.

MR. FLEMING: Objection.

THE COURT: Overruled.

A Not that Rio Rancho over what, stocks and bonds?

Q Over other investment opportunities.

A That real estate itself was a better investment.

Q Rio Rancho was real estate, wasn't it?

A Right.

Q Was there any company policy regarding the desired atmosphere in a room during the sales presentation?

MR. ARKIN: Objection.

THE COURT: I don't know what you mean by desired atmosphere in the room.

MR. DEVORKIN: Let me withdraw that. I want to back up for one thing, your Honor, I am sorry.

Q Was anything said at these sales dinners when you were talking about other investment opportunities about the rate of return on those other investment opportunities?

A Yes.

Q What?

A The average that stocks had appreciated over a certain length of time.

Q What average did you use?

A I don't recall offhand. It might have been 6, 8, 9 per cent, whatever.

Q What other rates of return did you give?

A We showed bank savings of 5 per cent.

Q What other rates of return did you use?

A We might have used insurance, I don't recall.

Q What rate of return did you give for land investment?

A For land investment overall we used the national figure which was 25 per cent a year.

Q Now, was there any company policy regarding the atmosphere at the restauran during a sales presentation?

THE COURT: What do you mean by atmosphere? That's what bothers me.

MR. ARKIN: Objection.

MR. DEVORKIN: Just a minute, your Honor.

(Pause.)

Q Mr. Mandel, I believe you testified earlier that one of the purposes for the training sessions and the training materials was to instruct the sales offices on creating the proper atmosphere at a sales dinner, correct?

A Yes.

Q What was the proper atmosphere?

A Enthusiasm, pride in your product.

Q Anything else beside enthusiasm?

A Enthusiasm to me means four or five different things, to be cheerful, to be happy, to be cordial.

Q Did you want to create excitement in the room?

A I would say excitement is part of enthusiasm, yes.

Q What about a sense of urgency?

A There was no real sense -- I am sorry, there was a sense of urgency, yes.

Q What do you mean by a sense of urgency?

A Urgency in regard to, I don't know if you would exactly call it urgency,maybe it's the wrong word, urgency in relation for someone to do something that evening regardless of the reason that they may be doing it for as far as in relation to purchasing a piece of property.

Q You wanted them to think that the property was going fast, didn't you?

MR. ARKIN: Objection, your Honor, leading and suggestive.

THE COURT: Sustained.

Q Was your prime objective to get the customer to sign the contract that night?

A The prime, yes.

Q Why?

A Statistically you find that when a person doesn't, that that individual most times does not do anything coupled with the fact that we had a refund privilege, we tried to get them to do something that evening.

Q Mr. Mandel, you knew if they didn't do something that evening they wouldn't buy the property, right?

A Not all the time.

MR. ARKIN: Objection.

THE COURT: Objection sustained.

A Most of the time, yes.

Q Was that philosophy part of the salesmen's training?

A What's that?

Q To create this atmosphere in the room and to create the -- to get the customer to buy that night?

A They were instructed to get them to try to buy that night, yes.

Q The speaker's script refers to salesmen as land consultants and experts, does it not?

A I believe it does.

Q What impression were you seeking to convey by those terms?

A That they were knowledgable in the area of real estate investment.

Q Was that accurate?

A In some cases; yes. some no.

Q What techniques were used to create a sense of urgency in the room?

MR. ARKIN: Objection, your Honor. He said urgency was not quite the right word.

THE COURT: Yes, but he also defined what he meant by urgency.

MR. ARKIN: Perhaps Mr. Devorkin ought to also.

THE COURT: No, the witness has testified as to what he meant by urgency. Go ahead.

Q Mr. Mandel, what techniques were used to create the sense of urgency that you have described?

A I would say it was more of an overall enthusiasm, pride in the property, explaining to people that there were sales presentations going on throughout the country and that they were speaking of a specific piece of property.

Q Yes, continue.

A This was the way it was done.

Q What do you mean by they were speaking of a specific piece of property?

A In other words, each office was allocated certain properties.

Q Yes, and what did you want the customer to believe?

A What did I want the customer to believe?

Q Yes, about those properties.

A That this piece of property that they were discussing with them was assigned for this office for that night.

Q Yes, and what about it?

A To do something about it. Take advantage of the fact that it was available that night.

Q If they didn't take advantage of the fact that it was available that night, what would happen?

A They wouldn't buy it.

Q What would happen to them?

A I don't follow you as far as what would happen to them.

Q Mr. Mandel, isn't it a fact that you told customers that if they didn't buy the property it wouldn't be available to them again?

A Not so.

Q Under your oath today that's not so?

MR. ARKIN: Objection, your Honor. This is direct examination.

THE COURT: Sustained.

MR. DEVORKIN: I would make the same representation, your Honor, that I made earlier.

THE COURT: Sustained.

MR. FLEMING: I object to that.

Q Mr. Mandel, was there a technique called holds?

A Yes, there was.

Q How did that operate?

A When the presentation was finished, sales representatives would get up and call a hold on a specific piece of property which was on an allocation sheet.

Q Did the salesmen give -- were they given instructions to do that?

A Yes, they were.

Q Is that one of the discretionary things or was that one of the mandatory things?

A That was mandatory.

Q What was the purpose of the holds that were called out?

A The main purpose is so that two sales people in the same room aren't discussing the same piece of property because there were various sizes of property on all allocation sheets and you didn't want to be put in a situation whereas two people have sold the same piece of property.

Q What did you want the customer to believe as the salesmen were standing up and saying hold?

MR. ARKIN: Objection, your Honor.

MR. FLEMING: Objection.

THE COURT: I haven't found that yet. When a salesman stood up and said hold that he was telling an untruth?

MR. DEVORKIN: All I want to know, your Honor, is what --

THE COURT: Until you establish that, if a hold is an honest statement that somebody at table A has bought it, therefore somebody at table S cannot buy it, there's nothing wrong with that.

Q Was it a fact that when a salesman at table A put a hold on a particular piece of property that the customer that he was dealing with had bought the property? Yes or no.

A No.

Q What did you want --

THE COURT: What was he saying hold for?

THE WITNESS: He explained that he wanted to discuss that piece of property with the individual so that none of the other consultants can discuss it with their prospective customers. That was in the manual.

THE COURT: All right.

Q What did you want the customer to believe when the salesmen were standing up and saying hold?

MR. ARKIN: Objection.

MR. FLEMING: Objection.

THE COURT: If anything.

MR. DEVORKIN: That's correct.

Q If anything.

THE COURT: Was this done for the purpose of the customer or done for the purpose of the salesmen?

A It was done so that the salesman can speak to the customers about property. There were times that salesmen told a customer prior to the close that he was going to call a hold on a specific piece of property to discuss it with him.

THE COURT: All right.

Q Did the salesman tell the customer anything else about the holds, Mr. Mandel?

A He told them the reason he took a hold was so that he could discuss this with them so that none of the other consultants in the room could discuss this with their potential customers at the same time.

THE COURT: Did any of the other salesmen when they heard a hold turn to anybody at their table to use that announcement of a hold to encourage the customer to buy a piece of land?

THE WITNESS: No, sir.

Q You are certain about that, Mr. Mandel?

MR. ARKIN: Objection.

MR. HOFFINGER: Objection.

THE COURT: That's not objectionable.

MR. FLEMING: Excuse me, your Honor.

THE COURT: That's not objectionable. Overruled.

A To the best of my knowledge it was never used that way.

Q What was the company policy concerning price increases on Rio Rancho land?

MR. ARKIN: Objection, asked and answered, your Honor.

THE COURT: Overruled.

MR. FLEMING: I was going to make the same objection, Judge.

THE COURT: Go ahead.

A Pardon me?

Q What was the company policy about making price increases on Rio Rancho property?

A Price increases took place as there was more and more development to the land, as real estate prices overall were going up, but primarily as development took place at the property.

Q Did you have anything to do with making price increases?

A I gave my opinion at times.

Q How frequently were prices increased?

A I believe possibly twice a year.

Q Was it the regular practice to increase them twice a year?

A I wouldn't say -- I don't know if it was a regular practice. I couldn't honestly say to you that it was increased twice a year every year.

Q Was it increased once or twice a year every year?

A Yes.

Q Was it frequently increased twice a year?

MR. ARKIN: Objection, your Honor.

THE COURT: Overruled. He was only there five or six years, ask him.

Q During the five or six years -- during the seven years that you were at Rio Rancho Estates working for AMREP, how frequently, how many times per year were prices increased on the average?

A I was involved in pricing increases basically from 1966, 1967 to 1970 and prices did increase at least once a year over that period.

Q What percentage?

A I believe up to 10 per cent, if I am not mistaken.

Q How did AMREP actually communicate the price increase to the sales office?

A I instructed the sales offices through the regional managers that there was a price increase which would take effect at a certain time and it was going to increase up to a certain amount.

Q Were telegrams sent out in conjunction with that?

A There were telegrams sent out to the offices stating that a price increase was pending of up to a certain percentage.

Q Were any instructions given with respect to how to use that telegram?

A The instructions -- no. No instructions were given to say to someone to use it a specific way, no, sir.

Q Were there any instructions given with respect to the telegram?

MR. ARKIN: OObjection, asked and answered.

THE COURT: He already answered it no.

Q Were the telegrams used in any way at dinners that you attended?

A That I attended, no, sir.

Q Who determined the price increases for Rio Rancho land, which officers?

A I believe there were a few officers, if I am not mistaken.

Q Which ones?

A I believe --

MR. FLEMING: Objection.

THE COURT: Sustained.

Q Did you have discussions with your other officers in AMREP about price increases?

A Yes, I did.

Q Which officers did you discuss it with?

A I discussed it at times with Dan Friedman or Chester Carity.

Q Anyone else?

A And I believe I might have discussed it also with Howard Friedman. I cannot be sure.

Q Who among that group, if anyone, determined that a price was going to be increased?

A I was told of a price increase by Chester Carity. I don't know who in the group set up the price increases.

(Continued on next page.)

Q Mr. Mandel, the scripts that you have identified that are in evidence talk about Albuquerque bursing at the seams and there being a scarcity of land in Albuquerque, correct?

A The description is Albuquerque as bursting at the seams. IT doesn't say there is a scarcity of land in it. I don't see those words at all in any of the scripts I recall.

Q Does it talk about Albuquerque only growing to the northwest through Rio Rancho Estates?

A It said Albuquerque was blocked and the logical path of growth was to the northeast which is where Rio Rancho Estates was located, if I recall the exact words.

Q Northeast or northwest?

A Northwest, I am sorry.

Q To your knowledge, what methods were used by the company to research or verify those claims?

A I do not know.

Q During the course of your employment with AMREP did you ever visit Albuquerque and Rio Rancho?

A Yes, I did.

Q How many times?

A Oh, a good couple of times a year. I don't recall exactly.

Q Initially when you came to Rio Rancho or AMREP, Rio Rancho was about 55,000 acres?

A Yes, sir.

Q Did there come a time when it was increased in size?

A Yes, sir.

Q Approximately when was that?

A I believe it was about 1969 or 1970, in that area.

Q How large did it become?

A I believe it became 91,000 acres.

Q Before it increased in size were the sales offices having any problems with respect to inventory of land to sale?

A There was a time, yes, sir.

Q What was the nature of the problem?

THE COURT: How about when?

Q When was that?

A I believe it was around 1969, if I am not mistaken.

Q What was the nature of the problem?

A There was a scarcity of land, scarcity of inventory available for the various offices.

Q Did you have any conversations with any officers of AMREP about the size of Rio Rancho and about that scarcity?

A I'm sure I must have.

Q Who do you remember having such conversations with?

A I had a conversation, I believe, with Howard Friedman, with Dan Friedman and Chester Carity.

Q What did you say to them and what did they say to you, one at a time?

MR. ARKIN: Objection. Them?

THE COURT: He said one at a time. Go ahead.

Q Were these conversations in 1969 when the problem was existing?

A I believe that was the date, yes.

Q What did you say to each of those gentlemen and what did each of them say to you, if anything?

A That I said to them we needed inventory for the various offices and they told me that they were working on acquiring some more inventory.

THE COURT: You say they, each one of them told you?

THE WITNESS: I couldn't say each one told me, your Honor.

THE COURT: Which one told you?

THE WITNESS: I do not honestly remember.

Q Did you have conversations --

MR. FLEMING: I don't know what to do with that. That has to be struck.

THE COURT: I don't.

MR. FLEMING: All right. You are the judge.

Q Before this time of the acquisition what, if anything, was said to customers at sales dinners either by the speaker or sales people about the availability of land at Rio Rancho?

A To my knowledge, nothing was brought out about that. That they were out of property, you mean?

Q Yes.

A Nothing was ever said that they were out of property.

Q Mr. Mandel, isn't it a fact that the salesmen and the speakers told people that Rio Rancho was selling out fast?

MR. FLEMING: Objection.

THE COURT: Overruled.

A Was selling fast, not selling out fast.

Q Selling fast. And that there wasn't much land left or there wouldn't be much land left?

MR. ARKIN: Objection. He is leading.

THE COURT: He is asking him.

A I didn't hear that.

Q What if anything was said about resale of Rio Rancho lots after the customer had bought them?

A Nothing was to my knowledge ever said.

Q Wasn't it a fact that customers were told once the company sold out Rio Rancho properties that there should be an increase in the value of the customer's lots and they would be able to resell it at a profit?

A Never to my knowledge was any salesman, sales office, anyone ever working under me ever instructed or did I ever receive such an instruction from anyone.

Q Mr. Mandel, showing you Government Exhibit 931 for identification, do you recognize it?

A Yes, I do.

Q What is it?

A It's a memo of a meeting which took place on March 29, 1969. I was present at that meeting and we discussed --

Q Who else was present at that meeting?

A Phil Cohen, Don Greenhall, Curt Oler, myself and Dan Friedman.

Q Who was Phil Cohen?

A Phil Cohen worked in the Albuquerque office.

Q What did he do there?

A Phil Cohen was an administrative assistant.

Q Who was Curt Oler?

A Curt Oler also worked in the Albuquerque office, if I recall.

Q In what capacity?

A I believe in the same type of capacity or accounting type of capacity.

Q Who was Don Greenhall?

A He also worked in the Albuquerque office. He also was involved in administrative assistance.

Q Where did this meeting take place?

A To the best of my recollection it took place in, I believe, Albuquerque.

Q Do you remember what happened at that meeting?

A According to the memo --

Q Do you remember of your own knowledge what happened at the meeting?

A No, I do not.

THE COURT: Look at it and see if it refreshes your recollection.

Q Read the whole thing.

A Yes.

Q Do you remember now what happened at the meeting?

A I vaguely remember what was discussed according to that, yes.

Q Does that mean you don't remember everything that happened?

A I don't remember everything that happened. I remember certain of the things because certain of the areas I was involved in as far as from sales, as far as setting up certain offices to handle certain promotions.

Q Does this memorandum accurately reflect what occurred at that meeting?

A Yes, sir.

MR. DEVORKIN: I offer 931.

MR. ARKIN: May I have it?

VOIR DIRE EXAMINATION

BY MR. ARKIN:

Q You didn't prepare this memorandum, did you?

A No, I did not.

MR. ARKIN: There is no basis for its admission. It's not past recollection recorded of what happened.

THE COURT: He says he was present and that's what was recorded.

MR. ARKIN: He can testify from his own mouth as to what took place. This can come in only as past recollection recorded. He didn't record it.

THE COURT: Who wrote that?

THE WITNESS: I believe it was prepared, according to that, by Dan Friedman, if I am not mistaken.

THE COURT: Objection sustained.

MR. DEVORKIN: This is one of the documents on that list.

THE COURT: But an objection has now been made which I have sustained.

Q What do you remember about that meeting?

A I remember that we discussed availability of inventory and that we were going to try to make available to different offices certain properties such as in unit 16, that we were going to in certain states where it was permissible to TBA property, that means to be allocated, that was the basis, of my recollection, in setting up certain offices to try to push in unit 16 and give a special vacation travel allowance. That's all I can recall from that meeting.

Q Would you direct your attention to No. 3-A and B?

A Yes.

Q Does that refresh your recollection about what happened at the meeting?

A We never went through with that.

Q Well, what was the discussion about that at the meeting?

A The discussion at that meeting was the suggestion was made to possibly sell to home site owners over this period only commercial and multiple dwelling property which we did not do.

Q Why wasn't that done?

A Obviously I must have felt that it was not feasible or after thinking it over I just didn't feel it was right to do.

Q What do you mean it wasn't right to do?

MR. GLENDON: Objection.

THE COURT: He didn't think it was feasible.

Q Why wasn't it feasible?

THE COURT: If it wasn't done what difference does it make why it wasn't done?

I think this is a good time to adjourn until tomorrow morning at 10:00.

(Jury left the courtroom.)

(Continued on next page.)

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THE COURT: Mr. Lavinsky wants to put something on the record.

MR. LAVINSKY: Your Honor, I have a previously committed engagement on Friday which requires that I leave here at noon. I have so advised Mr. Howard Friedman, president of the company and Mr. Arkin will cover for me.

THE COURT: Mr. Howard Friedman?

MR. HOWARD FRIEDMAN: Yes, sir.

THE COURT: You heard Mr. Lavinsky's statement?

MR. HOWARD FRIEDMAN: Yes, sir.

THE COURT: He said that Mr. Arkin would cover for him. Is that agreeable to you?

MR. HOWARD FRIEDMAN: I approve of that, sir.

MR. LAVINSKY: Thank you very much, your Honor.

THE COURT: After your going over last night of this list of documents regarding authenticity what still is open?

MS. CROSS: Your Honor, we reached an agreement on a great many of the documents. Primarily we have films for example -- I am sorry, advertising brochures. There were a great many of them we agreed on. I haven't sat down and tried to categorize them because we finished at 11:00 o'clock at night.

THE COURT: I don't want categories, I want exhibit numbers.

MR. ARKIN: Ms. Cross is fully authorized to proceed in my stead.

THE COURT: I want the exhibit numbers which you object to on authenticity.

MR. ARKIN: May I be excused?

THE COURT: Yes.

MR. KAUFMAN: Before Mr. Arkin leaves, we haven't had a representation from defense attorney as to how they intend to proceed on cross examination. We don't know whether or not we are still bound to turn over the names of witnesses two days in advance.

The last we heard they are still discussing it.

THE COURT: What is the decision on that?

MR. ARKIN: If your Honor please, Mr. Fleming and I discussed it, everybody discussed it, and the thought is, if it's agreeable to your Honor and I think your Honor would wish, what we might have one principal cross examination and if somebody's particular ox was gored, as your Honor suggested yesterday they might examine and possibly one other examination of five to ten minutes, but no more than that.

THE COURT: You get one and you get the attorney who represents any individual defendant whom, as you said, ox was gored . If that is the agreement that is fine.

The government continues to turn over. If that is not your agreement clearly and unequivocally it does not get turned over.

What is the answer?

MR. ARKIN: I believe Mr. Fleming and I agree then that we would prefer to have the additional short crack at the witness, is that correct?

THE COURT: Then the government need not turn over the material. But you get the Jencks material.

MR. ARKIN: There is one minor lacunae --

THE COURT: A little who?

MR. ARKIN: I used the word lacunae.

THE COURT: I thought that was a fish.

MR. ARKIN: At this time of day it could very well be.

The point is that I know that certain ofthe government witnesses did not testify in the grand jury and indeed there may be no 3500 material in respect to them.

With respect to that limited number of witnesses who have not testified in the grand jury and with respect to which there is no 3500 material, may we leave it ,under this state of events have advance notice of who they are going to be? We have a massive file in respect to a large number of people.

In order to expedite cross examination, the principal cross examination and the short crack cross examination if I can have the file here in court on or its way rather than having somebody retreat it from 70 Pine Street.

THE COURT: If the government is calling a witness concerning whom they have no 3500 material for the following day, the government should give the name of the witness.

MR. ARKIN: Thank you very much, your Honor.

MR. FLEMING: Your Honor, in the interest to our right to a speedy trial we will still try to keep cross examination to as short as possible.

THE COURT: I have a greater interest in a speedy trial.

MR. FLEMING: I have reason to believe, your Honor, that the government has no -- well, the government knows that the statistics or the prices read by Mr. Devorkin from that page 9, the government knows that those are true in fact and that Mr. Devorkin when he said that he was going to prove that they were false has misrepresented.

THE COURT: He already retreated. He wants to prove it was misleading.

MR. FLEMING: He made a representation in front of the jury and we are three months from resolving that representation and I move it should be resolved.

THE COURT: He can say in front of the jury tomorrow that on the statement that these were faulty and misleading he meant to say they are not false.

All he has to say is they are not misleading.

MR. FLEMING: He knows they are not false.

MR. DEVORKIN: I don't know they are not false.

MR. FLEMING: You do not know that those figures are true, are you saying that?

MR. DEVORKIN: I don't personally know that, Mr. Fleming.

MR. FLEMING: On your oath --

MR. DEVORKIN: I won't respond to your colloquies.

MR. FLEMING: Are you saying on your oath as an attorney that you do not know those figures are true?

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THE COURT: He has stated to the jury that they were false and misleading. He is going to say tomorrow morning before we put Mr. Mandel on the stand that yesterday when he said they were false and misleading he meant to say only they were misleading, period. That solves it.

MR. HOFFINGER: Your Honor --

THE COURT: That is all he had to say.

MR. HOFFINGER: At the side bar your Honor didn't understand what was misleading. How is the jury going to understand that play on semantics?

THE COURT: If he answered the originally what were you going to do?

MR. HOFFINGER: He asked them if it was false.

MR. FLEMING: Is the government going to claim they were false?

THE COURT: He said they were false and misleading. Now he is going to say I meant only to say they were misleading.

MR. DEVORKIN: The record will reflect that I did that afterwards when Mr. Fleming stood up.

THE COURT: That is at the side bar.

MR. DEVORKIN: I believe I said it on the record.

THE COURT: I don't like you doing it in front of the jury. You did it at the side bar. Let's go on. I want to get through with the exhibits.

MS. HYNES: I agree. Can I make one application please?

That is that, one, Mr. Fleming should be directed by the Court not to jump up and make those kinds of inquiries of the government in the middle of the government making an offer of proof. It is an improper inquiry in the middle of the government's examination of a witness when we intend to prove that it is false.

I think Mr. Fleming knows very well that that is an improper statement to make in front of the jury and we would not have had the problem.

The second thing I want to make for the record is that we will have testimony in the case with regard to these specific examples but more importantly I think Mr. Fleming has to be cautioned not to make those kinds of comments in front of the jury becuase if those continue we are going to have additional difficulties with this jury where we shouldn't have to.

THE COURT: I don't think he should do it. If you want to get a representation come to the side bar.

MR. FLEMING: I agree with that and I did it really in extremist. I want to make this representation.

I know enough about the Code of Prosecutorial Ethics to know that you cannot read to the jury under the impression that what is being read is false something you do know is not false.

THE COURT: I agree with you. My assumption was, the way he read it to the jury was, these figures are false. That was my reaction.

MS. HYNES: That was read as a piece of evidence that came into this trial, a piece of promotional material that was used at a sales dinner. A piece of promotional material where the foundation had been laid that was specifically pointed out to a customer.

THE COURT: I am sorry, Ms. Hynes, you are missing the whole point. There are a lot of things that come in that way. The point is why do you use them and how do you use them?

As I sat here I was under the impression that you were telling this jury that these facts were false. That was my reaction and based on that I have a right to make a ruling.

Let's get on to the other things.

Which exhibits on this list which incidentally will be called Court Exhibit 1, Jimmy, I will give this to you to be marked as Court Exhibit 1, a heading called Company-produced documents which the government gave me yesterday afternoon.

Which exhibits are still in dispute?

MS. CROSS: 157-P, your HOnor, 158-C, 160-C, 160-D and 160-E, 162-C, B and C, your Honor. I believe it is only part of that. It is the part where the customer signs for the HUD report. It includes the agreement which we don't object to.

166-C, 166-E --

THE COURT: Ms. Thompson yesterday said she had not seen that. Is that the basis of your objection?

MS. HYNES: Ms. Thompson had seen it but she wanted to recheck the government's actual exhibits.

MS. CROSS: My understanding was it is a letter from the customer.

THE COURT: Go ahead.

MS. CROSS: 169-B, 169-C, 169-H, 171-A, 172-A, 173-A, 174-A, 5-A.

THE COURT: What?

MS. CROSS: 175-A, 177-A, 178-A, 179-A, 180-A through E and then on that list, your Honor, 1971 to 200 are rebuttal only so we haven't gone through them, 200 but the government represents they will have a live witness to authenticate them -- I am sorry, that is 202. 203 is the same. I come to one where I have a note on handwriting. We have a standing objection to that handwriting on these documents. I have not noted that.

THE COURT: I gathered yesterday we agreed any extraneous handwriting would be removed by the government before it is exhibited to the jury.

7end of

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MR. KAUFMAN: Your Honor, there are different types of handwriting. The handwriting we put on of course we agree to remove.

There are some memos that I think we will get to later, typed memos where there is handwritten cc's on the bottom. Those documents had the handwritten cc's when they were turned over to us by the defendants.

THE COURT: Then they would stay on.

MR. KAUFMAN: That is all I was saying.

MS. CROSS: There are other documents though with comments written throughout the document, your Honor. If you were to look only at the document which might be, you know, for example, a memo from Daniel Friedman to Howard Friedman, then there is handwriting throughout that document.

We don't know who put that handwriting on. It is extraneous to Daniel Friedman or Howard Friedman.

Now, the handwriting --

THE COURT: On that representation I assume it wouldn't come in.

MS. CROSS: I don't know who put the handwriting on many of these documents. Some of them are so covered with handwriting that it would have to be typed over to put it in evidence.

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Our problem is that we don't know whether the handwriting was written on the document. While it may have been on the document when it was put into the grand jury, it could have been put on the document years after it was written by anybody in the company and we don't know who. That is the problem with handwritings.

THE COURT: I gather some should be taken off and some should come in.

Without seeing them I really cannot rule on them. But if these are documents that were produced from the files of the defendants and the question of authenticity comes along, they were in your custody up to that point.

On the authenticity question, assuming everything else was all right, they would come in.

MS. CROSS: The question is authenticity vis-a-vis what? We agree that is a copy as produced by the company.

Is that an authentic copy of the memo as sent? When it was sent it may not have had that handwriting on it.

THE COURT: I suppose that would depend on what the handwriting refers to.

MS. CROSS: Certainly.

Where it came from. Now we have some memos where there are three or four different copies of the same memorandum which are being produced to the government. Some with handwriting on it, some without handwriting on them, some different kinds of handwriting on them and if you pick any one of them you cannot say that it is as sent. Obviously it was sent without the handwriting on it and as received then it would depend on whose handwriting and when it was written on there.

THE COURT: I suppose the general rule we have to take a position that any handwriting on a document would be excluded unless the government can show who put the handwriting on.

MS. CROSS: Exactly.

THE COURT: I don't see how we can have any other ruling. I gather you take documents from Mr. Carity to one of the Friedmans and there is handwriting on that, you want to put it in to show what Carity knew or what Carity said or what Friedman knew or what Friedman said, but you cannot tell whoput the handwriting on, I don't see how the handwriting can come in.

MS. CROSS: That is our position, your Honor.

THE COURT: I gather, Mr. Devorkin, you do not contend otherwise, do you?

MS. HYNES: Your Honor, there will be

witnesses who will be in a position to identify certain handwriting on memoranda and I think we have to handle it on a document by document basis.

THE COURT: I start off with --

MS. HYNES: I agree with your Honor.

THE COURT: Absent any explanation or testimony tying the handwriting in to someone, which would have an effect on this case, the handwriting would be out. That is as far as I can go on that.

What is your next point?

MS. CROSS: All I was going to say was I had not noted all of the memos that had some kind of handwriting on it.

THE COURT: That is one classification.

MS. CROSS: That is, but I am not giving those numbers to your Honor now.

205 was not produced, that is Solomon Friend's income tax return.

207 you have already ruled out.

208 you have already ruled out.

209 to 217 you have already ruled out, according to our records.

MS. HYNES: I have 208 as okay.

THE COURT: There is only one way to do it and I will take a look.

MS. CROSS: My note is that that is supposed to go on to a chart.

THE COURT: A stipulation chart, that is what my notes show.

MS. CROSS: 209 through 217 are of the same ilk. It is Forms 3-S and 4-S.

MS. HYNES: But we have an agreement that the Form 3-S and 4-S, if we should use them in making the chart on the stock ownership, are authentic and we can rely upon them for that purpose, but we won't offer them into evidence.

MS. CROSS: Yes.

THE COURT: That was done three weeks ago. Why do we have to go over it again?

MS. CROSS: We have not gotten the proposed chart to look at so I dont know what is going on.

226 was withdrawn by the government but it is okay.

THE COURT: I don't understand.

MS. CROSS: It was withdrawn by the government and it was not included in the group that they intend to present in their case in chief. It was an advertisement so when we went through a whole bunch of ads we looked at it and we don't object to it.

That is the same with 233.

THE COURT: 232-A to E are okay?

MS. CROSS: That is okay, authenticity-wise.

240 to 244 were withdrawn by the government and we didn't discuss them.

246 to 255 are withdrawn by the government and we didn't discuss them.

THE COURT: Hold it a second. 240--

MS. CROSS: 240 to 244.

THE COURT: Yes.

MS. CROSS: 246 to 255.

THE COURT: Have been withdrawn.

MS. CROSS: They have been withdrawn for the time being.

Then there are another series of ads that have been withdrawn.

THE COURT: What are they?

MS. CROSS: 257 and 258 were withdrawn by the government but they are okay.

259 we have an objection to on authenticity grounds.

260 to 265 were withdrawn by the government.

267 to 270 were withdrawn by the government.

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272 to 288 are not to be -- are withdrawn by the government.

301 to 306 were withdrawn by the government.

307 we have an objection on.

308 was withdrawn by the government.

309 we have an objection on.

310 to 312 were withdrawn by the government.

313 we are told that they will have a live witness to authenticate it.

THE COURT: Yes.

MS. CROSS: 314 we have an objection to. I guess these were the ones we did -- sorry, okay.

318 to 320 --

THE COURT: What about 314?

MS.CROSS: 314 we object to. It is a speaker's presentation and we don't know whether or not it was used.

318 to 325 were withdrawn by the government.

326, 327 and 328 we object to.

329 to 330 were withdrawn by the government.

THE COURT: I am sorry, I missed that.

MS. CROSS: 329 and 330 were withdrawn by the government.

THE COURT: You objected to 326 and 327.

MS. CROSS: And 328.

THE COURT: And 328.

MS. CROSS: 329 to 330 are withdrawn by the government.

331 we will attempt to check if the script was exactly as it appeared in a movie if we are able to do so, but in the absence of our being able to say a movie was made from the script, we will object to it.

That is the same objection with 332.

333 and 334 were withdrawn.

336 we object.

337 to 340 were withdrawn.

341, again that is another script and we will check to see if it was used if we can find out, but in the absence of being able to find out, we will object.

THE COURT: Yes.

MS. CROSS: 342 to 345 were withdrawn.

354 was withdrawn.

THE COURT: I gather 353 there is no objection.

MS. CROSS: That is okay and 356 is okay.

357 we object to. It was never used.

367 was withdrawn.

THE COURT: What about A, B, C, D and E?

367-A through D.

MS. CROSS: It was withdrawn, the whole thing.

368 we start to get into -- we have one problem and that is some of these are numerous documents in one exhibit and we have objections to some and not objections to others.

THE COURT: 368 you better put down on your list.

MS. CROSS: Part of it may be okay, but other parts aren't.

370 was okay.

374 to 376 were withdrwan, but they are okay.

These are again advertisements, without the handwriting, of course.

377-A was withdrawn but it is okay.

378-A is withdrawn, but it is okay.

379 is okay.

380 was withdrawn but okay.

THE COURT: 379 is in?

MS. CROSS: 379 I believe is in, yes. It is okay.

THE COURT: 308 is withdrawn.

MS. CROSS: Withdrawn, but it is okay.

381 there is no such exhibit.

382 is okay.

383 okay, but it was withdrawn.

384 last night I believe neither of us could find a copy.

MS. HYNES: It was introduced today in evidence.

MS. CROSS: That is why I have a question mark by it.

THE COURT: That was 384?

MS. CROSS: That was introduced today, I believe, in evidence.

385, 386 and 387 were all withdrawn, but they are okay. These are also advertisements, more copies of the same.

388 and 389 are okay.

403 to 409-A, your Honor has already ruled on. These are the S-1's and so on, some of which have already been introduced.

THE COURT: We have agreed on these.

MS. CROSS: Yes, so we didn't go through them last night again.

428 is withdrawn.

429 we ran into a problem with that last night because the government thinks it is a HUD filing and it

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doesn't look like a HUD filing so for the time being we have an objection on authenticity because it doesn't look to us like what it purports to be.

430, again this is another filing and we told the gover-ment if they represent that it is as filed, it will be okay. Our problem is when we xeroxed these we ripped them apart so many times we don't know if our copy is correct.

431 was withdrawn.

THE COURT: 431 isn't on the list.

MS. CROSS: It isn't, I am sorry.

THE COURT: 432 to 5.

MS. CROSS: 432 was withdrawn.

433, 434 withdrawn, 435 withdrawn.

456 --

THE COURT: 457. 56 and 57 are put together.

MS. CROSS: That is only because they are contiguous numbers produced by the government.

There are two parts attached and they are okay. Two different memos.

457 is okay.

459 was withdrawn.

460, 461 an objection was sustained to them.

THE COURT: So that is out.

MS. CROSS: Yes.

THE COURT: 464.

MS. CROSS: 464 was okay.

466 we object to.

THE COURT: Go ahead.

MS. CROSS: 468 we object to.

469, 470 objection sustained.

471, 72, 73 and 74 were withdrawn.

476 agian we object to parts of it which are letters from the State of California. There is a letter from an independent attorney and we will check with him to see if that is his signature and then I believe there is also some memo in there which is okay, but basically that I think is the entire 466.

476, I am sorry.

477 was withdrawn.

478, again this is a letter -- the letter we don't object to but the attachment we don't know if it was ever used. It is a letter to Mr. Carroll, an Ohio attorney, asking him to file certain papers with the state, an advertisement proposed, adn we don't know ifit was used so we would object to that.

481 was okay.

484 was withdrawn.

ojw 13

485 withdrawn.

486 withdrawn.

487 was okay.

488 was withdrawn.

489 withdrawn.

490, the basic memo is okay, but this is one of those with handwriting all over it. I don't think you could possibly wipe out the handwriting and leave the memo intact. There were a number of them, but that I just happened to note.

491, this is a memo from John Sommerhalder who is on the will-call government witness list. We do not object to the memo. The three attachments are all from people outside the company.

492 was withdrawn.

493 we object to.

495-A we would object to. That, by the way, is identical to an exhibit you ruled on yesterday, 137-F.

497 is withdrawn.

499 was withdrawn.

500 is okay.

501 to 515, your Honor has already ruled on, a wh-le series of those, those are the state filings with all the subparagraphs and everything.

ojw 14

MR. DEVORKIN: Your Honor, we may very well use these depending on how things go. We still would want -- we are going to try to come up with a stipulation on the disclaimers in there, but I can see very easily how each particular document might come up.

THE COURT: I will see what my notes show here.

MS. CROSS: I believe your Honor has ruled on these.

THE COURT: My notes show, this is the 500 series --

MS. CROSS: 501 to 515.

THE COURT: I have 501-A, B, C, D, E and F were all out on October 29th.

501-G is in.

501-H went out on October 29th.

501-I is in.

501-J went out on October 29th.

501-K, L and N are in.

501-O went out on October 29th.

501-P is in.

501-Q went out on October 29th.

501-S went out on October 29th.

501-U went out on October 29th.

527 was okay.

528 was withdrawn.

529 we objected to that.

530 wasokay.

531 was okay.

532 was okay.

533 was withdrawn.

534 was okay.

535 was okay.

536 okay, 537, okay and 538 withdrawn.

539 okay. Let me read my note.

There is a memo on top which was okay if the handwriting was removed and there is a lot of handwriting on it.

As to the attachments, we would object to them.

THE COURT: What is that number?

MS. CROSS: 539.

540 was okay.

541 okay

542 okay.

543 okay.

544 okay.

545 was withdrawn.

501-V through 501-GG went out on October 29th.

501-II through QQ went out on October 29th. I am sorry, change that, 501-II through 501-LL went out on October 29th and 501-NN through 501-QQ went out on October 29th.

All right.

MS. CROSS: Your Honor ruled, I believe, on the other ones that did not go out. We spent the better part of a day --

THE COURT: I assume they are in.

MS. CROSS: Yes. On certain paragraphs.

THE COURT: Now we go on to -- there is no point, the rulings are in the record.

MS. CROSS: Yes, they are, that is why we didn't discuss them last night, 501 to 515.

THE COURT: Through 515.

MS. CROSS: 516 was withdrawn.

517 is okay.

518 is okay.

519 okay.

520 okay.

521 okay.

523 okay.

524 to 526 were withdrawn.

546 was okay.

547 okay.

549 okay.

552 withdrawn.

553 withdrawn.

Now, 554 again the memo I think is okay, but the attachment was not filled in and there is no indication it was ever effected so we would object to that.

THE COURT: That is still open.

MS. CROSS: Yes.

555 okay.

556 okay.

557 again a problem on an attachment, I believe. The memo was okay.

558 you have already ruled on. That is an annual report of the Bank of New Mexico.

THE COURT: That is out.

MS. CROSS: Yes.

559 was okay.

560 you already ruled in over our objection.

562 was okay.

563 you sustained an objection to.

564 --

THE COURT: Why Ms. Hynes did you repeat these

ojw 18

numbers yesterday when I struck them out two weeks ago?

MS. HYNES: Your Honor, I explained to you yesterday that what we were doing was in the event that they would come in through redirect or in rebuttal, we would handle it all at once when we got down to the last part of the list, we didn't do it that way. We did do it at the beginning.

MS. CROSS: 564, the two individual memos are okay. Our numbering system does not have it attached. The government does have them attached, but our numbering system is not consecutive so we may have a problem with the relationship of the two parts to the whole.

565 we object to.

566 was withdrawn.

567 we object to.

568 was okay.

569 and 570 were okay but we thought last night our memories were that you ruled them out. We couldn't remember them.

THE COURT: 569?

MS. CROSS: And 570.

THE COURT: 569 was ruled out on November 4th.

570 I have no notation on so I assume it is in.

MS. CROSS: That is okay.

571 is okay.

572 is okay.

573 was withdrawn.

574 is okay.

575 is okay.

576 was withdrawn.

577 was okay.

578 I believe you sustained an objection to.

THE COURT: You have gone too far. The list goes 562 --

MS. CROSS: I believe to 589.

THE COURT: Go ahead.

MS. CROSS: So 578 I believe you sustained an objection to. That is what our records show.

THE COURT: 578 was out November 4th.

MS. CROSS: 579 we objected to.

THE COURT: Paragraphs 6 and 7 come in on 579.

MS. CROSS: Yes.

580 was okay. That is only to be used in rebuttal however, I believe.

581 was withdrawn.

582 was okay.

583 was withdrawn.

584 is -- yes, that is only to be used on rebuttal again, but that is okay.

585 an objection was sustained.

THE COURT: I ruled that out on November 4th.

MS. CROSS: Yes.

586 that was okay.

THE COURT: Okay if a proper foundation is supplied.

MS. CROSS: Right. We only went to the question of authenticity.

587, 88, 89 were all withdrawn.

THE COURT: 587 was ruled out on November 4th.

MS. CROSS: Our notation said withdrawn.

THE COURT: It was ruled out on November 4th

MS. CROSS: Okay.

587 is out.

588, 589 were withdrawn.

595 was withdrawn.

There was an objection sustained to 596.

THE COURT: 596 was ruled out on November 4th.

MS. CROSS: Yes. 597-A was okay.

598 was okay.

ojw 21

600 an objection was sustained to it.

THE COURT: Yes, on October 25th.

MS. CROSS: 603 was okay.

604 is a memo with attachments. I believe they are all okay.

605 withdrawn.

606 withdrawn, 607 withdrawn.

THE COURT: 605? I don't even have it on the index.

MS. CROSS: You don't because it did not appear in the government's brief.

THE COURT: All right.

MS. CROSS: 608 is okay, 609, 610 and 611 okay.

612 we had to check today on Herman Oberman's signature and that one is okay.

613 is not Mr. Oberman's signature so we would have an objection on that one.

614 we object to.

615 is okay.

617 we would object to until we track down who it is that sent the memo. We don't know at this point if he is an employee.

THE COURT: Right.

ojw 22

MS. CROSS: So we have to object.

618, these are minutes. On some of these the copy that the government has is not signed and we are checking to see whether or not they are as signed.

THE COURT: Didn't that same question arise at pretrial about minutes not being signed?

MS. CROSS: I don't recall.

THE COURT: Go ahead.

MS. CROSS: We will check on them. If they are fine, we don't object to it.

619 was withdrawn.

620, again we must check on whether or not he was an employee at the time.

621 to 22 were withdrawn.

623 is another copy of the Albuquerque Transportation Study Bulletin which you ruled out yesterday.

624 again is a group of different letters. We would object to the one from Hoyt Duty who worked for the State of California.

THE COURT: What number was that?

MS. CROSS: It is part of 624. There are a group of documents together all numbered 624.

You had better put that down as a problem throughout.

625 is okay.

THE COURT: Wait a second though. In 624 you have a memo to Soske from Duty.

MS. CROSS: Yes.

THE COURT: You are objecting to which one?

MS. CROSS: To that because it is from Hoyt Duty. To Irving Roth from Chester Carity we would not object on authenticity.

The copy of Amazing Land Bargain we don't know if it was used so we would object on authenticity.

625 is okay.

627 was withdrawn.

628 is another movie script and again unless it was made into a movie that was used, we object on authenticity ground.

629 was okay.

630 okay.

631 is okay.

632 was okay.

633 okay.

634 is another copy of the minutes. If it is a correct copy it is okay.

635 and 636 were withdrawn.

ojw 24

637 is another copy of the minutes the government has that isn't signed and we will check on.

Now 638 again is a memo from someone who is on the will-call government list. John Sommerhalder. It is okay.

639 was withdrawn.

660 was okay.

661 was okay.

662 was okay.

664 was okay.

666 we object to.

667 was withdrawn.

675 we object to.

676 was withdrawn.

677 was okay.

678 okay.

679 okay.

680, 681 and 682 okay.

683 was okay.

684, 685 -- I am sorry, 684 is okay.

685 was withdrawn.

686, 687, 688 and 689 are okay.

690 was withdrawn.

691, 92, 93, 94 are okay.

ojw 25

695 was withdrawn.

696 is okay.

697, 698 are okay.

700, 701 are okay.

703 is okay.

705 to 710 were withdrawn.

713 and 14 were withdrawn.

715 we had an objection on. I will check on that again, but I have that noted.

716 is okay.

718 is okay.

719 is okay.

THE COURT: Just go through 24 and we will quit.

MS. CROSS: 720 through 724 were withdrawn.

THE COURT: Okay.

See you tomorrow morning.

(Adjourned to Thursday, November 11, 1976 at 10:00 a.m.)

end t
end day

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Howard Mandel	595			

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UNITED STATES OF AMERICA

v. 76 Cr. 644

AMREP Corporation, et al.

November 11, 1976
10:00 a.m.

oOo

T1A.AM

(Robing room conference.)

THE COURT: Ms. Hynes has given me a brief upstairs about a half hour ago on this question of the playing of the tapes and allowing them in without any of the count victims having heard them. Did you serve these on the defendants?

MS. HYNES: Yes, I have.

THE COURT: I want an answer to this by tomorrow morning at 9:30.

The government just a few moments ago handed up another brief on "This is My Land." There is a great misunderstanding here. The basis of my ruling yesterday originally was the tone of voice of Mr. Devorkin reading this to the jury clearly implying that the factual material was false, number one.

Number two, when Mr. Fleming asked him whether he was going to prove they were false he said yes. It's not until an hour and a half later that the government comes forth and says now we are changing our theory. I want him to get up and tell that to the jury.

There is your brief back.

(In open court - jury present.)

XXX HOWARD MANDEL, resumed.

MR. DEVORKIN: May I make a correction of a statement I made yesterday before the jury?

THE COURT: Yes.

MR. DEVORKIN: Yesterday when I was reading page 9, an example from page 9, example G of Government Exhibit 384 in response to Mr. Fleming's question would the government prove that that example was falsely stated that we would prove it is false and misleading. I want to correct that and state that that example is misleading.

THE COURT: That it was not false is what I want you to say to the jury.

MR. DEVORKIN: We don't contend that it's false.

XXX DIRECT EXAMINATION (Continued)

BY MR. DEVORKIN:

Q Mr. Mandel, I believe yesterday you identified two tapes, 671-A and B in evidence and you identified the voice of a Mr. Hollander on those tapes, is that correct?

A Yes, sir.

Q Is that the Mr. Hollander that you described as a regional sales manager working for you?

A Yes.

Q At the point where the gentleman stands up or is identified as Mr. Hollander is it Mr. Hollander thereafter who is talking?

A Yes, sir.

Q Now, the tapes of sales dinner presentations that you received in your office periodically in New York, did they come in in some kind of box or envelope of any kind?

A Sometimes it was in a manila envelope and sometimes I believe just the box to my attention.

Q Were there any identification markings on the envelopes or the box indicating from what sales office the tape was or what date the sales meeting had occurred?

A Sometimes it was on the little area of the tape itself.

Q Where else might it have been?

A That would be the general place that I recall it being.

Q Would there be any writing on the tape box itself sometimes?

A It's possible.

Q What would that writing include?

A Generally it would say the date and the office.

Q Yesterday I believe you described or discussed a sales meeting or sales meetings that you conducted from time to time, is that correct?

A Yes, sir.

Q And I believe you just stated that part of the sales meeting on occasion would be to motivate the salesmen, correct?

A Yes, sir.

Q Did Mr. Hollander conduct such sales meetings under your authority?

A Yes, sir.

Q Was it part of AMREP company policy to have him conduct such sales meetings?

MR. FLEMING: Objection.

THE COURT: Overruled.

A When needed.

Q I am sorry?

A When needed, yes.

Q Yesterday you were describing for the jury the leverage approach. Do you recall that?

A Yes, sir.

Q At any time while the leverage approach was used was there any visual aid used in connection with the leverage approach?

A Not that I recall. Generally it was from the podium.

Q Did the speaker ever use anything like a blackboard or a piece of paper to draw out the leverage approach as he was speaking?

A Not at any dinners that I attended. That's to the best of my knowledge.

XXX (Court Exhibit 1 marked -- company produced documents._

Q Did you testify in the grand jury?

MR. FLEMING: Objection.

THE COURT: Overruled.

A Yes, I did.

Q That was January 15, 1975?

A I don't recall the date.

Q I am going to show you page 60 and direct your attention to line 12 of what has been marked Government Exhibit 3510-A for identification.

Would you please start reading to yourself at line 12?

A Yes.

Q Does that refresh your recollection as to whether a visual diagram of any kind was used?

A A piece of paper.

Q What was done with the piece of paper?

A There were various figures showing different investments such as insurance, stocks and savings.

Q Was that piece of paper passed around to the customers that night?

A If I recall, yes, it was given to customers to write in certain information.

Q To write in what information?

A To write in stocks, insurance.

(Continued on next page.)

Q The customers actually wrote that in?

A Yes, sir.

Q Did you include the rates of returns that you described yesterday on that piece of paper?

A There were figures used which I don't recall.

MR. ARKIN: We have covered that ground yesterday, if your Honor please.

THE COURT: Overruled.

Q Do you recall yesterday testifying about the meeting in March 1969 with Mr. Dan Friedman and others concerning the shortage of land for sales offices to sell?

A Yes, I do.

Q Directing your attention to Government Exhibit 931 for identification, would you read the first full paragraph under the caption?

A "For the next few days" --

Q To yourself, please.

A I am sorry.

Q Does that refresh your recollection as to whether there were any other conversations at that meeting?

A As I remarked yesterday, there were certain ones that I really don't recall exactly.

MR. DEVORKIN: I would offer 931 on the basis of it being one of the documents on the list that we have gone over with your Honor.

MR. ARKIN: Your Honor ruled on this particular document yesterday.

MR. DEVORKIN: The basis of my offer is different though, your Honor.

THE COURT: Wait. I did not rule on 931 yesterday.

MR. ARKIN: Your Honor, yesterday here in the course of the trial you ruled on my objection that it was not past recollection recorded.

THE COURT: Oh, that is the one you mean?

MR. ARKIN: Yes, sir.

MR. DEVORKIN: I am not offering it on that basis, your Honor.

THE COURT: Come up to the side bar.

(At the side bar)

THE COURT: What is the basis of this?

MR. DEVORKIN: I am offering this document under Rule 801 as a statement of the defendant Dan Friedman and AMREP Corporation -- it is authentic. It was produced by the companies for us. It is typed and signed Dan Friedman. That is the basis of my offer.

THE COURT: You represent Dan Friedman?

MR. FLEMING: Yes.

THE COURT: What is your objection?

MR. FLEMING: I didn't make one.

THE COURT: Do you know what it is?

MR. FLEMING: I do know what it is.

THE COURT: Objection overruled.

(In open court)

(Government Exhibit 931 received in evidence)

(At this point Mr. Devorkin read a portion of Government Exhibit 931 in evidence to the jury)

THE COURT: What does "No two payment sales" mean?

MR. DEVORKIN: That is my next question.

Q What was a "No two payment sale"?

A I would assume that is if a person did not make a certain amount of payments they forfeited.

Q Is that how you would understand that term?

A Yes,sir.

Q Who ran that meeting in March 1969?

A I do not recall.

Q Do you know in terms of acreage how large Albuquerque is?

A No, I do not.

Q Do you know whether or not in terms of acreage it is larger or smaller than Rio Rancho?

A I believe it is smaller.

Q When was the last time you were at Rio Rancho?

A In 1970.

Q At that time approximately how much of the total Rio Rancho land was occupied by the developed portion of Rio Rancho?

THE COURT: The developed portion?

MR. DEVORKIN: Yes, the developed portion.

THE COURT: Occupied by Rio Rancho?

Q What percentage of the entire Rio Rancho property was occupied by the developed portion of Rio Rancho Estates?

A I do not recall exactly.

Q Was it more or less than five percent, your best estimate?

A An estimate?

MR. FLEMING: I object to that. There is no foundation for that.

THE COURT: Sustained.

Q Did you have a chance to see the developed portion of Rio Rancho Estates on your trips to Rio Rancho ?

A At different times, yes, sir.

Q Did you have a chance to see it in 1970?

A No, I did not.

Q You didn't go to the developed portion in 1970?

A No, I went straight to the office where I had business to conduct.

Q When was the last time you inspected the developed portion of Rio Rancho Estates?

A I would say sometime in 1969.

Q And you are familiar with how large Rio Rancho was in 1969 and 1970?

A Yes, sir.

Q On the basis of that, those inspections, how large a portion of Rio Rancho Estates would you estimate was occupied by the developed section?

MR. FLEMING: Objection on competence, your Honor.

THE COURT: Overruled. He saw it with his own eyes and he can testify as to what he saw.

A I would have to put it in the category of around five percent to the best of my recollection.

itlb

Q Mr. Mandel, would you take a look at Government's Exhibit 93 in evidence. Which units were in Rio Rancho before its enlargement in 1969 and 1970?

A Are you saying the 55,000 acres?

Q Yes.

A That was sections, if I recall, one --

THE COURT: You mean units, don't you?

THE WITNESS: Units 1 through -- I believe it was 1 through 16, if I am not mistaken.

Q 17, was that also in the section?

A I don't recall.

Q That would be the lower half of this exhibit, is that correct?

A Yes, sir.

MR. DEVORKIN: I will show that to the jury, your Honor, indicating below this line here. The map is marked as northwest corner of Alameda Grant.

Q The sections above that were acquired when Rio Rancho was expanded?

A To my knowledge, yes, sir.

Q What are blocks and lots?

A It is actually a location.

Q Well, a block was a section within a unit?

A It was within a unit.

Q There were lots within the blocks?

A Yes.

Q Mr. Mandel, during your employment were you familiar with the term of the phrase building area or core area?

A Yes, I was.

Q Would you explain what that term meant?

A There was an area set aside for immediate housing.

Q For what purpose?

A Anyone that wanted to build a house and move to Rio Rancho Estates.

Q They would exchange their lot in for one of those lots in those sections?

A Yes, sir.

Q Why was this exchange necessary?

MR. ARKIN: Objection, your Honor.

THE COURT: Sustained. Reframe your question.

Q Could the lot owner build on a lot outside the building area?

A At that time there were no utilities by his lot. If he wanted to build, he was exchanged up to a half acre, even exchange, into a building area, which was Unit 16 at that time at no additional cost for a lot to build a house that was supplied by utilities.

Q There were utilities in the building area but not in the other areas, correct?

A To the best of my knowledge, yes.

Q What happened to the lot that the customer exchanged in for the lot in the building area?

A It would go back into inventory.

Q What was done with it then?

A It was distributed to various sales offices.

Q To be sold?

A Yes, sir.

Q Was this provision regarding the exchange concept that you have described included in the contract the customer signed at the dinner?

A To the best of my recollection, yes.

Q Do you recall whether the substance of the exchange privilege or exchange provision ever changed at any time?

A Within the contract, I don't believe so. To the best of my knowledge, it never changed in the contract.

Q There was a time you say when the exchange privilege was half acre for half acre, correct?

A Yes.

Q Did there come a time when it changed from half acre for half acre?

A I believe at some point there was another section that was opened which was a quarter acre.

Q What section was that?

A I believe it was called Corrales Heights.

Q How did you learn about that change?

THE COURT: What change?

Q Are you saying that the exchange privilege changed in some way, Mr. Mandel?

THE COURT: No, he is waiting for you to ask him the question.

Q You say there was an area called Corrales Heights with a quarter of an acre.

A Yes, sir.

Q What, if anything, did Corrales Heights have to do with the exchange provision?

A It was a housing area. If someone wanted to purchase, they could exchange into Corrales Heights.

Q Was there a company policy with respect to exchanging into Corrales Heights?

A In what respect? I am not following you, I am sorry.

Q Did there come a time when somebody who wanted to exchange to actually build a house was exchanged into

Corrales Heights instead of an area that had a half acre lot for it?

A Yes

Q How did you learn about that?

A I don't recall who told me about it, but I know that it happened.

Q Did you have any conversations with any corporate officers, about it?

A About any one --

Q About the exchange now into Corrales Heights instead of the half acre homesite?

THE COURT: Mr. Mandel, you have said that there was an exchange privilege in the contract permitting a purchaser of a half acre in what we might call non-developed areas, because there were no utilities, to exchange that half acre for a half acre in a developed area when he wanted to build a house.

THE WITNESS: Yes, sir.

THE COURT: Obviously nobody wants to build a house if there are no utilities?

THE WITNESS: Correct.

THE COURT: He knew there was no utilities and if he wanted to build a house and get to it, he had to exchange it for a half acre in a building area?

THE WITNESS: Yes, sir.

THE COURT: That was a half acre?

THE WITNESS: Yes, sir.

THE COURT: Did there ever come a time when a person who had a half acre and wanted to exchange it for a building site was only allowed a quarter of an acre?

THE WITNESS: In Corrales Heights, sir.

THE COURT: Who chose Corrales Heights, the purchaser or was the purchaser told by the seller, to wit, Rio Rancho, that he could only exchange into Corrales Heights for a quarter acre?

THE WITNESS: To my knowledge no customer was ever told that the only place he could exchange into was Corrales Heights.

THE COURT: Go ahead.

Q Was there a company policy that preferred any particular area for exchanges over another?

MR. FLEMING: I object to the form of the question.

THE COURT: Overruled.

A As far as policy, not to my knowledge, sir.

Q Did you have any conversations with Mr. Chester Carity about exchange privileges into Corrales Heights?

A In general, yes, that Corrales Heights was a quarter of an acre; that we now have two areas, two housing areas.

Q Didn't Mr. Carity tell you that the company's preference was to exchange someone into Corrales Heights?

A Not that I recall, sir.

Q You don't recall whether he did or he didn't?

A I don't recall him saying that, no, sir.

Q What was the difference between Corrales Heights and the other area you are talking about?

A I believe Corrales Heights the utilities were underground, if I am not mistaken.

Q Were there any other differences?

A Not that I recall.

Q Was there an even exchange area outside of Unit 16 at any time when you were with the company?

A Not that I recall to the best of my recollection.

Q When somebody exchanged into Corrales Heights, what size lot did they get always?

A A quarter acre.

Q Did they have to pay any more money for that lot?

A I believe that there was a difference between the present selling price of their existing lot versus the current selling price of the quarter acre in Corrales Heights, the difference.

Q They paid more money to the company when they made that exchange?

A They paid additional money, yes.

Q What was the amount of money they paid?

A Whatever the difference was.

Q Was there a range of those differences?

A Not that I recall as far as a range.

Q Do you recall a range of about $1500 to $2,000?

A I don't recall the range becuase it depended upon what the person had, what he was exchanging.

Q While you were with AMREP, did you know how many lots the company had reserved in its building areas?

A I don't recall.

Q Do you know whether there were enough lots in the building areas to accommodate all of the Rio Rancho lot owners?

MR. ARKIN: Objection, your Honor.

THE COURT: Overruled.

A Would you rephrase that, please. Ask it again.

MR. DEVORKIN: Read the question back.

(Record read)

A If they all wanted to build at the same time, I don't believe at that point there was.

Q During the time you were with AMREP, did the contract signed by the customer when he bought land at the dinner party include a cancellation provision?

A Yes, it did.

Q Would you describe that provision?

A That was a six month money back guarantee when the customer visited his property, if for any reason or no reason whatsoever, if he was not happy, the company would refund all monies he paid in on his piece of property.

Q He had to exercise the cancellation when he visited the property?

A Yes, sir.

Q Did that cancellation right apply to any land that he bought after a visit to Rio Rancho?

A It did not, sir.

Q Who paid for the trip to Albuquerque by the customer?

A The customer paid for the trip.

Q Did the company aid in any way the customers in traveling to Albuquerque?

A They never -- as far as money?

Q No, not as far as money, but did they provide any assistance of any kind?

A Yes, sir.

Q Whatform did that take?

A They had tours from different cities.

Q When did the tours start?

A To the best of my recollection maybe in 1966, '67, in that area.

Q By the way, when the customer signed a contract at a dinner party, did he have to make a down payment?

A Yes, he did, sir.

Q Approximately how much?

A Approximately ten percent.

Q Then how would he pay for the purchase of the land?

A Monthly installments.

Q For how long a period of time?

A I believe it was seven years, if I am not mistaken.

Q Did the customer pay any interest charge on his unpaid balance?

A Yes, on the unpaid balance.

Q How much?

A I think it varied, six percent, seven percent.

Q When did the customer's first payment usually come due after he made his down payment?

A Approximately thirty days -- thirty to forty-five days after he made his down payment.

Q If the customer went on a company-sponsored tour to Albuquerque, how much did that cost the customer?

A It varied depending on locale.

Q What was the range?

A I believe at one point that I recall from New York I believe it was $350.

Q That was for a couple?

A Yes,sir.

Q What was the purpose of these tours?

A So that the people could inspect their property.

Q Was there any company purpose for the tour?

A Pardon me?

Q Did the company have any purpose for the tours?

THE COURT: You keep saying "customers". I gather by "customers" you mean people who have already bought?

MR. DEVORKIN: Yes, your Honor.

THE COURT: Why don't you say that. "Customers" can be anybody.

Q Did the company have a purpose for conducting tours for the homesite owners?

MR. FLEMING: Objection.

THE COURT: Overruled.

A Yes.

Q What was that?

A They wanted to get as many people to Albuquerque to see their property as possible.

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Q For what purpose?

A So that --

Q Withdrawn. Why with a tour?

A Number one, it was cheaper for the individual to go on a tour than if he went himself and the company was in a position to give better service to the customers when they had a tour than if an individual came in by himself.

Q Were there any other purposes, Mr. Mandel?

A The basic purpose was so that they could service the people properly that people would not get lost if they came in by themselves or wander around.

Q Mr. Mandel, isn't it a fact that one of the purposes was to convince the customer not to cancel his contract?

MR. ARKIN: Objection, your Honor. Leading question, suggestive.

THE COURT: Overruled.

A At no time that I recall was -- the property was shown to the individual. I don't recall at any time when someone wanted his money back,that wanted to sign a paper asking for his money back, that he was pressured into not allowing it. That was a strict company policy which I set with the Albuquerque office.

Q Mr. Mandel, that wasn't my question. My question was--

MR. FLEMING: Your Honor.

Q Wasn't one of the purposes of the tour to minimize the amount of cancellations by people?

MR. FLEMING: Objection.

THE COURT: He said no.

MR. DEVORKIN: I don't think he did say no, your Honor.

THE COURT: Yes, he did.

Q You are saying under oath that that was not a purpose?

THE COURT: Sustained.

MR. FLEMING: Thank you.

Q Do you want to change your testimony, Mr. Mandel?

MR. ARKIN: Objection.

THE COURT: Sustained.

MR. FLEMING: I would like a mis-trial.

MR. HOFFINGER: I join in that.

THE COURT: Denied.

Q Was there a concept called control or known as control with respect to the tours, Mr. Mandel?

A Control where you can control the people as to better service for the people.

Q Was there any other aspect to the concept of control, Mr. Mandel?

A To the best of my recollection the main purpose of the tours was to get the people down and on the tours you have the utmost control so that you can service people, you are able to show them their property, you can schedule them properly to see their property. It was all completely planned so that you knew exactly where the people were and what they were doing so that you could give them the proper service.

Q Were there any other phases to the concept of control?

MR. ARKIN: Your Honor, it has been asked and answered several times.

THE COURT: Agreed. Objection sustained.

Q Mr. Mandel, isn't it a fact the tours were organized so that the customer who had owned a lot would only see certain areas and certain things on his trip?

MR. FLEMING: I object, your Honor.

THE COURT: Overruled.

Q Isn't that true?

A He saw there was a planned program for him, yes, sir.

Q One of the purposes of the tour was that he would only see certain things, isn't that correct?

A He was allowed to go wherever he wanted to go. We had a planned tour where we took him throughout Albuquerque plus other areas. At no time was the individual told that he could not go on his own; that he could not rent a car, and do whatever he wanted to do.

Q In the course of the tour didn't you seek to control their activities so they would only see certain things?

MR. ARKIN: Objection.

MR. FLEMING: I am tired of this prosecutorial testimony. I ask for a mis-trial again, it is outrageous.

THE COURT: Motion denied. Objection sustained.

Q Did you ever take the customers to Albuquerque to see their property --

MR. ARKIN: Objection, your Honor.

THE COURT: Sustained.

MR. DEVORKIN: May I have a moment, your Honor?

(Pause.)

Q Mr. Mandel, the people that went on tours were only property owners, correct?

A Correct, sir.

Q Who showed the customer the property -- his property at Rio Rancho.

A Sales personnel at Rio Rancho.

Q On what part of the tour was that done?

A At what part?

Q Yes.

A There was a day assigned to show him the property.

Q When was that day usually?

A It might have been a Saturday or a Sunday. I don't recall offhand.

Q That was at the end of the tour?

A It was the day before, generally a day before the tour ended.

THE COURT: How long were these tours?

THE WITNESS: Usually it was four nights and three days, your Honor.

THE COURT: In other words, I would leave New York on a Wednesday night?

THE WITNESS: You would leave say on a Friday. It would be Frida, Saturday, Sunday, Monday. Those would be the four days. The three nights would be Friday, Saturday, Sunday nights.

THE COURT: Okay.

Q How were salesmen who showed lot owners their property compensated?

A They were compensated if the customer solidified his piece of property, he was given a certain commission for what we called the solidification.

Q That means the customer didn't cancel?

A Yes, sir.

Q Was there any other basis of compensation?

A If a customer bought additional property, the salesman was given a commission on that.

Q What if the customer upgraded his property into a more expensive lot?

A It would be the same as I just described.

Q The salesman would get a commission?

A Yes, sir.

THE COURT: Let me understand this. If a customer went out and did nothing, which I gather is he turned around and came home and he still owned the property, the salesman would get a commission for that?

THE WITNESS: He would get a very small commission on that, yes, sir.

THE COURT: Was his only income commissions?

THE WITNESS: To the best of my knowledge, yes, sir.

THE COURT: In other words, so his income would come from either customers who kept their property, customers who bought more property and customers who exchanged property?

THE WITNESS: No, in addition to that he also had an income from any people coming in to Rio Rancho Estates who did not own property who might have been passing by and he sold, which was another area of compensation.

THE COURT: Go ahead. Any other areas of compensation for this sales person?

THE WITNESS: To the best of my recollection, no.

Q Were the tours successful in getting people to not cancel their contracts?

A Yes, sir.

Q Were the tours successful in selling more property?

A Yes, sir.

Q Did you have any conversations with any officers of the company regarding the success of the tours?

A I am sure at different times I must have mentioned that we had a successful tour.

Q To which officers?

A My recollection is probably I might have mentioned it to Chester Carity or Howard Friedman.

Q Did you review the tours with those gentlemen?

A Not in any depth.

Q What did you talk to them about it?

A Just that we had a tour out there which was a very good tour.

Q Did you discuss the performance of sales people?

A I never discussed the performance of sales people with them.

Q Did you talk about the volume of sales with them?

A I might have mentioned the volume that was on the tour, yes, sir.

Q Did you ever talk about bad tours with them?

A I am sure I mentioned a bad tour with them.

Q Generally what were the reasons that the tours were bad or unsuccessful?

A It could vary. It is very hard to pinpoint any specific reason that it was just bad. It was a bad tour.

Q What were some of the reasons that tours were unsuccessful?

MR. ARKIN: If your Honor please, is he asking what was said at any particular time to any particular person or his own opinion?

THE COURT: I gather his question is for what reason it was unsuccessful. I don't quite understand the question myself.

MR. ARKIN: I object to the question.

THE COURT: You had better reframe the question.

Q For how many years in your capacity with AMREP did you have experience with the tours, Mr. Mandel?

A From its inception.

Q Did you go on some of the tours?

A Not that I recall.

Q Did you discuss the tours with sales personnel at Rio Rancho Estates?

A Yes, sir.

Q Did you discuss with them what happened on tours?

A I am sure I might have said something to them about it. I don't recall specifics.

Q Did they report to you about the tours, how they went?

A Not all the time.

Q Did they report to you sometimes about them?

A Sometimes they sent a report.

Q Did they report to you about successful tours?

A They just sent in a form. They didn't say if it was successful or unsuccessful.

Q They sent in forms for every tour to you?

A Not all tours, no, sir.

Q Some tours?

A Yes, sir.

Q Would you make a comparison or analysis of the tour being successful or unsuccessful?

A I would note when we didn't have a successful tour.

Q What constituted a successful tour?

A Predicated on how many people solidified their piece of property and how many people were going down.

Q Any other criterion?

A If there were upgrades, that would constitute a successful tour.

Q If there were additional sales?

A Which is an upgrade, yes.

Q When there were unsuccessful tours in the terms you have just described, did you make inquiry to people at Rio Rancho Estates?

A I am sure I did.

Q Did they report to you about why a tour was unsuccessful?

A I don't remember any specifics.

Q You don't remember any conversations with anybody about that?

A I have had conversations and I don't recall any of the conversations I have had pertaining to that, sir.

Q But you do recall that they did explain to you why tours were unsuccessful, you just don't recall exactly what was said?

A I don't recall exactly what was said. I don't recall how many times it did happen, but there were conversations.

Q Do you recall in substance what you were told about that?

A I don't recall.

Q Were you informed on occasion that one of the reasons a tour was unsuccessful was because the sales people at Rio Rancho had lost control of the tour?

MR. ARKIN: Your Honor, this is testimony by Mr. Devorkin. The man said he did not recollect. It seems to me it is more than suggestive.

THE COURT: He is entitled to probe it, but not the way he is doing it.

MR. FLEMING: I join in that, your Honor.

THE COURT: Overruled.

MR. ARKIN: Is my objection sustained at least as to form?

THE COURT: Yes, I told him to reframe his question. He can probe him, but not that way.

(Continued on next page.)

Q Mr. Mandel, do you have any memory about the reasons given to you for tours being unsuccessful?

A No, I do not.

Q You have no memory of the conversations you had?

A I do not.

Q Was one of the factors brought to your attention the amount of control over the tour?

A I don't recall.

Q Did the exchange privilege, the exchange provision, require the lot owner to build a house when he exchanged his lot?

A No, it did not.

Q He could exchange his lot and get a lot in the building area and never build on it?

A That's not what you asked me.

Q When he exercised his exchange provision and got a lot in a building area did the exchange clause require him to put a house on that lot?

A Yes, in that case, yes.

Q What if he held more than one half acre of land?

MR. ARKIN: Objection.

THE COURT: I don't understand what you mean by that.

Q If the lot owner owned more than one half acre of land what could he do under the exchange privilege with his lots?

MR. ARKIN: He is asking for speculation, your Honor.

THE COURT: I assume he is being asked a question with this man, as head of sales, can answer. But I don't think the question is clear.

MR. ARKIN: I object on that basis too. It calls for speculation and it also calls for a legal opinion by Mr. Mandel and he is not here in that capacity.

THE COURT: He is here as head of sales as to know what the contract provided and policy.

Q The exchange provision --

THE COURT: Were there any limitations on the exchange provision regarding the amount of acreage that somebody could exchange in a building area?

THE WITNESS: He was able to exchange at half an acre at no additional cost to build a house on it. If he wanted to build two houses and he owned two half acres I believe he could exchange both of them in, to the best of my recollection.

Q If he built two houses?

A If he built two houses, yes.

Q If he owned three half acres if he built three houses?

A Yes, sir.

Q If his original lot was an acre in size or two acres in size or five acres in size and he wanted to exchange into a building area in order to build a house what would he do with the property in excess of one half acre that he owned?

A He would retain it, sir.

Q Did the commercial properties that were sold have exchange privileges? That is, in the contract.

A Not that I recall.

Q Did the ranchettes have exchange privileges?

A Not that I recall.

Q What was the inducement for getting these lot owners to buy additional land?

MR. FLEMING: Objection, the form of the question, your Honor.

THE COURT: Sustained.

Q What if any reasons were given the lot owners to buy additional lands by the sales people?

MR. FLEMING: Objection on competence, your Honor.

THE COURT: Overruled. He said he gave instructions as to how these things were to be sold, Mr.

Fleming. Overruled.

MR. FLEMING: If the question is what instructions did he give I have no objection to the question.

THE COURT: I would gather if he is in a position of giving instructions he would know generally what was done in the course of normal sale procedures.

Objection overruled.

A Can you repeat the question?

(Question read back.)

A There were no specific reasons. What did happen when a lot owner did buy an additional piece of property he did get a discount on it.

Q What inducements were offered --

THE COURT: That's an inducement.

Q What other reasons were given, Mr. Mandel?

A There were no reasons per se. If someone was invited back to a dinner party it was discussed with the individual if he was in a position to buy additional property.

Q What reasons was he given for buying additional property?

MR. ARKIN: Objection. He is asking the same question.

THE COURT: Sustained.

MR. DEVORKIN: Your Honor, he said he discussed it. I am trying to find out what reasons they gave.

THE COURT: I don't know what you are talking about, what reasons they gave.

He has testified as to standard procedures which he sent the salesmen to use but I don't see how he can testify what individual conversations went on between two people sitting at a table. I sustain the objection.

Q What instructions if any did you give sales personnel as far as the reasons they should use to sell additional properties to lot owners?

A There was nothing given to sales personnel specifically saying invite a property owner back and sell him a piece of property because of this, that and that reason. Property owners were invited back, especially property owners who had visited Rio Rancho Estates. In the course of the evening it's conceivable that the property owner asked the salesman that he was interested in additional property or the salesmanmight have asked the customer if he was interested in additional property.

In addition to that, if the customer did buy additional property he had a discount, a multiple purchase price.

Q Mr. Mandel, weren't salesmen instructed to sell additional property to home owners, home site owners?

A Instructed?

Q Yes.

A They were told that they should sell additional property, yes.

THE COURT: Wait a second. I think it's assumed if you invite them to a dinner presentation you are trying to sell property.

Q Mr. Mandel, wasn't the additional property sold to the customer as an investment?

A In cases it was sold as a long term investment.

Q That's the eight to ten years you talked about yesterday?

A Minimum, yes.

Q And commercial property was sold for the same purpose?

A Yes, sir.

Q Mr. Mandel, were you familiar with the special dinner party in which only Rio Rancho lot owners were invited?

A Yes, sir.

Q What was this dinner party called?

A A home site owner party.

Q When were these parties held?

A They were held at various times. They were held before price increases. They were held just at various times.

Q What was the purpose of these special parties for home site owners?

MR. ARKIN: Objection.

THE COURT: Sustained.

Q What type of land was sold at these parties?

A Residential, commercial, multiple dwelling.

Q How did the sales presentations at the special parties compare to the regular dinners?

A Most of the time they were basically the same. Every so often we might have had a guest speaker at one of them.

Q Were these special dinners successful in getting lot owners to buy more land?

A Yes, it was.

Q Are you familiar with the concept of loading?

A The concept of loading?

Q The term loading.

A I have heard the term loading, yes.

Q What does the term loading mean?

A The way I have heard it --

MR. FLEMING: Objection.

A Additional selling of additional properties to a property owner.

Q Did you have any conversations with any of the corporate officers of AMREP about the success of the special dinner parties for home site owners?

A Nothing that I recall specifically. I am sure I must have mentioned it to them that we had a successful party.

MR. FLEMING: I am sorry, I must ask that that last portion be struck.

THE COURT: Overruled.

(Continued on next page.)

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Q Did you ever see any of the corporate officers attend these special dinners?

A No, I did not.

Q Do you have any recollection of Howard Friedman attending one of these special dinners?

MR. ARKIN: Objection. He asked and answered that very question.

THE COURT: Overruled.

Q What is your answer?

A I was never at a dinner party with Howard Friedman at a special dinner party.

Q Did you ever have any conversations with Mr. Howard Friedman about his attendance at a special dinner party?

A Not that I recall.

Q During the sales presentation at the regular dinner parties did the podium speaker make any reference to other projects of AMREP?

A Yes, I believe they did.

Q What was said?

A I don't recall just offhand. I know it was mentioned that AMREP had developed an additional property. I don't remember the exact words.

Q What was the name of that property?

A I believe it was Rainbow Lakes Estates.

Q Where is that located?

A I believe in Florida.

Q What was said about Rainbow Lakes Estates at the dinner parties?

A If I recall the way it was to be used was the fact that the company was not a novice in the building, that they have had experience in building planned cities and that they lived up to every promise that they made.

Q What was the purpose of saying that in the presentation for Rio Rancho properties?

MR. FLEMING: Objection.

THE COURT Overruled.

A It was to show the credibility of the fact that the company was not a novice and that they have lived up to what they promised.

Q Have you ever been to Rainbow Lakes Estates?

A I have not.

Q Do you know how many homes there are at Rainbow Lakes Estates?

A I do not.

Q Do you know how many lots there are at Rainbow Lakes Estates?

A No, I do not.

Q Did you ever talk to any corporate officer of AMREP about Rainbow Lakes Estates?

A At one time I believe I spoke to Chester Carity.

Q What was your conversation with Chester Carity about that?

A We had a dinner party, a program for a little while of Rainbow Lakes Estates in New York.

Q Mr. Carity was familiar with that dinner program?

A Yes.

Q Did you ever talk to Henry Hoffman about Rainbow Lakes Estates?

A I believe in conjunction with the dinner party program of Rainbow Lakes Estates, yes, sir.

Q Did you ever talk to Mr. Howard Friedman about Rainbow Lakes Estates?

A It might have been in passing, I don't specifically recall.

Q When did you stop being vice-president of sales?

A February 1970.

Q Did you assume another title with AMREP?

A Yes, I did.

Q What was that?

A Vice-president of Marketing.

Q That is when Mr. Zaknich replaced you as vice-president of sales?

A He didn't replace me as vice-president of sales, no.

Q Was it shortly after that?

A I believe it was after I was no longer with the company.

Q What were your responsibilities as vice-president for marketing?

A To come up with various marketing concepts pertaining to the sale of Rio Rancho Estates.

Q What AMREP officers if any did you report to or work with on these matters?

A Chester Carity.

Q Anyone else?

A My immediate supervisor, Mr. Chester Carity.

Q Did you work with anyone else?

A I didn't work with anyone else per se. I am sure I spoke to people in varous areas.

Q Which people?

A Again, to the best of my recollection I am sure I discussed certain things with Howard Friedman, certain things with Dan Friedman.

Q Mr. Mandel, showing you what has been marked Government Exhibits 462 for identification, 463 for identification and 467 for identification, would you examine them please and tell us whether you recognize them.

A Yes.

Q What are these documents?

A They are memos sent to Chester Carity from myself.

Q Are these your copies of those memos?

A Yes, sir.

Q Which you retained?

A Yes, sir.

Q You provided them to the government?

A Yes, sir.

MR. DEVORKIN: I offer 462, 63 and 67.

MR. FLEMING: Objection on the grounds of relevance, your Honor.

THE COURT: There is no exhibit number on the July 23rd document.

What number should that have?

MR. DEVORKIN: That is 467, your Honor.

THE COURT: 467?

MR. DEVORKIN: Yes, sir.

THE COURT: I gather these are being offered to show knowledge on the part of Mr. Carity?

MR. DEVORKIN: Knowledge and control, yes.

THE COURT: Control I don't see. Knowledge, yes.

The objections are overruled.

(Government Exhibits 462, 463 and 467 received in evidence)

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MR. DEVORKIN: May I read one of these, your Honor?

THE COURT: Yes.

(At this point Mr. Devorkin read portions of Government Exhibit 462 in evidence to the jury)

Q Mr. Mandel, what was CNA?

A That was the known and operated office in Colorado.

Q What was GSR?

A Also an owned and operated office.

Q Who is MRC?

A An owned and operated office.

Q What was A&C?

A An owned and operated office.

Q What was the big ticket home sit program?

A I don't recall.

Q Is DP down payment?

A Yes, sir.

Q 34, is that the number of customers that attended?

A Yes, sir.

MR. FLEMING: Could we read 3 too?

MR. DEVORKIN: I will be happy to.

Q Mr. Mandel, what was the VIP program?

MR. FLEMING: Could the record at least note that there are 26 separate items on this document?

THE COURT: The document is in evidence.

Go ahead.

Q What was the VIP program or concept?

A It was a program that was tested in New York where property owners were invited for a luncheon.

Q Where was the luncheon held?

A ATC's office.

Q Who proposed that program?

A I did.

Q To whom did you propose it?

A I proposed it to the manager of the New York office.

Q Who was that?

A I believe I proposed it to Peter Miller.

Q Did you tell any of the corporate officers in AMREP about it?

A Initially, no. Then I did once it was in the works.

Q What was their response?

A I don't recall.

Q Was it a successful program?

A For the limited --

THE COURT: Aren't you going to ask him who?

MR. DEVORKIN: He says he does not recall, your Honor.

THE COURT: Afterwards.

Q Who at AMREP or what officers at AMREP did you tell about it?

A I spoke to Chester Carity.

Q Anyone else?

A I don't recall.

Q Do you recall what you told Mr. Carity?

A I believe just that we were testing a new type program.

Q Was the program successful?

A From the limited number of parties it was successful, yes, but it was too early to tell if it was going to continue to be successful.

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Q Was the program continued?

A I believe after the program was tested, a month or two months later I was no longer with the company so I don't know.

Q Mr. Mandel, what, if anything, were the customers told about their ability to resell the land?

A To my knowledge it was not -- the salesman never told the customer anything. They were never told to say anything to the customer.

Q Showing you page 62 of Government's Exhibit 3501-A for identification, would you direct your attention to lines 13, 14, 15, 16 and 17.

MR. FLEMING: If your Honor please, may I come to the bench.

THE COURT: Yes.

We will have a short recess.

(Jury left the courtroom)

(At the side bar)

THE COURT: What's the problem?

MR. FLEMING: Your Honor, Mr. Devorkin, the first line to which he referred the witness on page 62 was line 13. I believe the record will reflect that. He is apparently attempting to impeach the last answer of the witness and I would like to direct your Honor's attention to lines 11 and 12, which immediately precede that in the grand jury and which, apparently, is being left out of this presentation. I think it is misleading and deceptive.

THE COURT: I don't think it makes any difference. It is saying that he sells through local brokers.

MR. FLEMING: My point, your Honor, I may be mistaken, but I thought the thrust of the question was any resale program by AMREP. What he says in here is no, nothing was said about resale, completely consistent with his testimony here except he said, if you want to sell through a broker, sell through a broker.

THE COURT: Before you put this to him, ask him whether they were ever told that they could resell through brokers.

MR. DEVORKIN: Fine, your Honor.

THE COURT: He has said here there was nothing ever told about resale.

MR. DEVORKIN: That was the purpose of asking it, your Honor.

MR. FLEMING: Is it a representation that, in fact, a resale could be accomplished or is it a representation that they would go to a broker for resale?

THE COURT: Let him examine the witness first.

MR. ARKIN: May Mr. Devorkin be admonished not to refer to "grand jury". To keep using the words "grand jury" I think is a little inflammatory.

THE COURT: I think it is better to say "Did you ever testify that" and then show it to him. It doesn't make any difference whether it was grand jury or not as far as the jury is concerned and as far as the legal consequences are concerned. It makes no difference whether it is on a prior trial or before the grand jury.

MR. DEVORKIN: Fine.

THE COURT: Yes?

MR. HOFFINGER: Okay.

MR. FLEMING: Thank you, Judge.

MR. ARKIN: One other thing, one brief thing, your Honor.

THE COURT: Yes.

MR. ARKIN: I realize that, like we do, there are several counsel at government table and I could not help but occasionally hear, and I am sure this was not meant in any untoward manner, but I could not help overhear Ms. Hynes whispering across the distance where she is from the stand to Mr. Devorkin while he is examining and it seems to me that if Mr. Devorkin can hear Ms. Hynes that perhaps a juror with sharp ears could also. I think notes would be somewhat better than those whisperings.

THE COURT: Ms. Hynes, either go up to him or call him back to you and give him a note, but don't speak to him so the jurors can hear.

MR. DEVORKIN: I think the same thing is true of defense counsel because when I am standing at the lectern I can easily hear comments back and forth between defense counsel.

THE COURT: They cannot be prevented from communicating.

MS. HYNES: While we are on this, one other item. The defendant Daniel Friedman, because of the jury set-up here with the alternates and having to put them in the aisles of the jury box, Daniel Friedman is sitting immediately next to the last laternate although there are other seats further away and taking notes.

THE COURT: What difference does it make?

MS. HYNES: I don't know what those notes say and I think his sitting right next to the last juror --

THE COURT: I have conducted many cases with multiple defendants where they have had to sit next to the jury box. I see nothing wrong with it as long as he doesn't talk to them.

MS. HYNES: The problem is the writing of the notes.

THE COURT: I am sorry the room is too tight, but that's the way we are.

MS. HYNES: Your Honor, my point is that there are other seats that are not --

THE COURT: He is entitled to sit near counsel.

MS. HYNES: That's not the point. He is sitting near counsel, but right next to the jury box.

THE COURT: There's no other place for him to sit.

MS. HYNES: Your Honor, there are two empty seats next to the seat he is sitting at --

THE COURT: I have no objection to his sitting there. I have gone through too many trials where defendants have sat in chairs just the same as he has and there is nothing wrong with it.

MR. RUBINO: One more observation, your Honor.

THE COURT: Unless you point out to me that he has conducted himself improperly and that you haven't done.

MR. RUBINO: Where Mr. Devorkin is showing the witness grand jury minutes in order to refresh his recollection, may I respectfully urge that the word "testimony" not be used at all but just the document shown to him.

THE COURT: No.

MR. RUBINO: It causes them to speculate there might have been a prior trial.

THE COURT: I don't care what you speculate. You have asked not to have it denominated "grand jury" and I have agreed. He is entitled to be asked, "Did you previously testify."

MR. RUBINO: Not if it is being used to refresh his recollection, your Honor.

(Recess.)

(In open court; jury present.)

MR. DEVORKIN: May I proceed, your honor?

THE COURT: Yes.

BY MR. DEVORKIN:

Q Mr. Mandel, were customers or home site owners ever told that they could resell their lots at any time but through local brokers in the Albuquerque area?

THE COURT: I don't understand what you mean could resell. You mean they went to a broker and they would sell it or they could have given it to a broker to sell for them?

Q I mean that they would be able to resell through a local broker in Albuquerque.

A They could list it with a broker in Albuquerque.

Q Were they told they could resell it with a local broker?

THE COURT: What do you mean -- were they told that there was a market to buy it?

MR. DEVORKIN: No, I want to know what words were actually used, your Honor.

THE COURT: He has answered that. They could go list it with a local broker.

Q Did you tell them they could list it or did you tell them they could resell it?

A I never personally told them anything. To the best of my recollection, from what I recall, that they could list it with a broker to the best of my recollection.

Q I am showing you Government's Exhibit 3510-A, page 62, lines 13 through 15.

Does that refresh your recollection about what they were told?

A Again, what it says here --

Q Does it refresh your recollection about what they were told?

A What I said before.

Q That they could list it?

A I used the wrong word in that, yes, sir. When I said that, my definition of that is not that you can go to a broker who is definitely going to resell it for you, you can go to a broker and list it.

Q Besides your definition of it, what were the people told?

A That they could list it with a local broker.

Q Did you testify previously in this matter?

THE COURT: No, that's not inconsistent and I so rule.

MR. DEVORKIN: All right.

Q Mr. Mandel, while you were with AMREP, did Rio Rancho or AMREP Corporation ever conduct a study of the resale market for Rio Rancho lots?

A When you say study, could you define a little more what you mean by that, please?

(Continued on next page.)

Q Did they make an investigation to the resale market for Rio Rancho lots?

A Not that I recall.

Q Were you aware of the resale market for Rio Rancho lots with brokers, real estate brokers in Albuquerque?

A No, I was not.

Q You were not personally aware of whether real estate brokers in Albuquerque were selling Rio Rancho lots?

MR. FLEMING: We can shorten this if we didn't ask everything twice. I object.

THE COURT: He said no. Your question originally was very clear and he said no.

Q You don't recall any study or inquiry made by AMREP or Rio Rancho Corporation?

THE COURT: Your study had two different concepts.

MR. DEVORKIN: He said he didn't understand what I meant.

THE COURT: Put them up one at a time but don't lump them together so you mousetrap a witness.

Q Do you recall any inquiries made by Rio Rancho or AMREP into the resale market for Rio Rancho lots?

MR. FLEMING: Objection, repetitive.

THE COURT: Overruled.

A To the best of my recollection if you are talking about within a local area with local brokers?

Q I am talking about any area, Mr. Mandel.

A I made inquiry, yes.

Q How did you go about doing that?

A I asked the Albuquerque office to give me a listing of how many people had written in at given times asking for resale, to resell their property.

Q When you say the Albuquerque office, whom do you mean?

A I believe I might have spoken to Phil Cohen and asked him to handle it for me.

Q Did he work for Rio Rancho?

A Yes, he did.

Q What was the purpose of that question?

A I was curious to see over a period of time how many people had written in and asked to resell their property.

Q When you say written in what do you mean, written in to whom?

A Written in to the company.

Q AMREP or Rio Rancho?

A AMREP, Rio Rancho or their local office.

Q What did you instruct Mr. Cohen to do?

A To give me a list broken down. I don't recall exactly how I asked him to break it down.

THE COURT: Would you call these people purchasers rather than customers?

MR. DEVORKIN: Yes.

Q What did Mr. Cohen do if anything?

A He made a study and he sent me the information that I requested.

Q Was one of the reasons for this inquiry to determine whether a resale program should be developed by AMREP?

A The purpose of this was while I was vice president of marketing and I just felt as another area of marketing I had asked them to make this. I requested them to give me this information because I was formulating in my mind the possibility of some sort of a resale type program which I did on my own which no one instructed me to do.

Q And what were the results of Mr. Cohen's inquiries?

A I don't recall the figures.

Q Did he report figures back to you?

A As a matter of fact, he did.

Q What did those figures show?

A I don't recall the figures. If you showed them to me I would recall them.

Q Did they show that the Rio Rancho purchasers were interested in reselling their properties?

A It showed a very small percentage from the overall number of purchasers who wanted to resell, very minute.

Q How many inquiries did Rio Rancho get a month that Mr. Cohen examined that were interested in reselling their lots?

A I don't recall. You have a memo there of mine that shows it.

Q You don't have any memory about it?

THE COURT: He told you four times no, Mr. Devorkin.

Q Did you discuss this inquiry that you made with Mr. Cohen with any of the AMREP corporate officers?

A I believe at a certain time I wrote a memo to Chester Carity outlining my thoughts pertaining to such a program and I believe I might have also at a certain time informed him of the number of people who had inquired as such.

Q Did you have any conversations with Mr. Carity about that?

A I don't recall.

Q Did you have any conversations with Howard Friedman about that?

A I don't recall having any.

Q Did you have any conversations with Daniel Friedman about that?

A I do not recall having any.

Q Showing you Government Exhibit 3510-A for identification, would you examine the last four lines of page 55 and the top of page 56.

A Yes.

Q Does that refresh your recollection as to whether you had any conversations with those three gentlemen?

A Obviously I stated I did but it does not refresh my memory, I am sorry.

Q Well, was it accurate when you stated you did?

A I am sure it was.

Q So do you believe that you did have conversations with them?

A Yes, I did.

Q Did you tell them about the types of programs you were interested in?

A I am sure I must have.

Q Did you discuss with them the need for such a program?

A If I felt that there was a need I am sure I did tell them.

Q What was the basis of the need?

A I don't recall exactly.

Q Would you take a look at page 56 of Government Exhibit 3510-A, lines 13 through 17. Does that refresh your recollection as to what the basis of the needs were?

A That I had felt there were people who had bought it for an investment and wanted to resell it, yes.

Q There were a lot of people who initially bought it for investment, correct?

A Yes, sir, long term investment.

Q Did you tell Mr. Carity that about that need?

A I don't recall if I specifically mentioned it to him. I am sure I must have. I don't recall.

Q Do you recall if you said that to Mr. Howard Friedman?

A I do not recall if I said it to him.

Q Mr. Daniel Friedman?

A Again, I do not recall if I said it to them.

Q Were people able to sell their property?

A Were they able to or did they?

Q Were they able to.

A To my knowledge not that many resold their property.

Q In most cases no, correct?

MR. ARKIN: Objection.

THE COURT: I don't know what you are driving at. If you are driving at that they couldn't that's one thing.

MR. DEVORKIN: That's what I am driving at.

THE COURT: He asked you that and you asked another question.

Q In most cases they couldn't sell their property, is that correct?

MR. ARKIN: He is testifying now.

THE COURT: He is asking what the witness obviously asked him to ask.

Q Most people couldn't resell their property?

A I don't know how many people actually tried to actually resell it through brokers or other people. I do not know. I don't know what the figures were as to the number of people who did try and the number of people who did not try. To my knowledge, the best of my recollection is that most people did not resell their property.

Q Could not resell their property, isn't that correct?

MR. FLEMING: Objection.

MR. DEVORKIN: There is a difference.

THE COURT: Obviously but you are the one who caused all the problem by not asking the question correctly.

Q Would you look at page 56 of Government Exhibit 3510-A and read lines 16 and 17?

A Yes.

Q Were most people able to sell their property?

MR. FLEMING: Objection.

THE COURT: Overruled.

A No.

THE COURT: He asked if this refreshes his recollection.

MR. FLEMING: There is a distinction --

MS. HYNES: The witness has answered the question already.

THE COURT: I am sorry, an objection is on the floor, Ms. Hynes. It doesn't mean because he answered the objection goes out the window.

MS. HYNES: I thought it was overruled, your Honor.

THE COURT: Both of them are standing up trying to talk.

I will see you at the bench here.

(At the side bar.)

THE COURT: Yes?

MR. FLEMING: The first question is how many people tried and the next question is of those who tried how many were able to sell. It's deceptive to say most people weren't able to sell without laying a factual basis of how many were trying to sell. That's my point.

THE COURT: I don't know what his testimony was.

MR. DEVORKIN: You can ask that on cross examination.

THE COURT: You can't mislead them.

MR. DEVORKIN: I am not trying to.

THE COURT: You started this whole thing by misleading them and he told you you were misleading them and you kept blithely on not even listening to them.

MR. DEVORKIN: Your Honor --

THE COURT: Keep quiet while I read this.

What did you show him?

MR. DEVORKIN: Lines 16 and 17.

THE COURT: I see no reason why you cannot ask this witness these questions to clarify it:

"Q What was the reason for the need of the resale program?

"A Well, the reason is that a lot of people who initially bought property bought it under the premise of eventually selling it as an investment.

"Q And were they able to sell it?

"A In most cases, no."

He so testified under oath.

MR. FLEMING: My point is if you have 10,000 purchasers and 1,000 tried to sell and 999 of those 1,000 cannot sell it is fair to say that of those who tried to sell most could not.

THE COURT: This question was clear in the grand jury and he answered it.

MR. ARKIN: May I state my objection to the question, the particular question?

MR. SPRIZZO: There was a minute number who were willing to sell.

THE COURT: Okay.

MR. FLEMING: He says most couldn't sell which implies most of the customers.

THE COURT: He says in most cases no, and that's the witness' wording.

MR. FLEMING: Of those who tried.

THE COURT: Read to the witness where you aksed these questions, did you give these answers, 12 through 17 and then quit.

MS. HYNES: May I make an application?

THE COURT: Go back and get this out of the way.

(In open court.)

BY MR. DEVORKIN:

Q Mr. Mandel, on a prior occasion were you asked these questions and did you give these answers:

"Q Was there a need for a program, was there a determination that there was a need for a resale program?

"A Yes, there was.

"Q What was the reason for that need?

"A Well, the reason is that a lot of people who initially bought property bought it under the premise of eventually selling it as an investment.

"Q And were they able to sell it?

"A In most cases, no."

Did you give those answers to those questions?

A I am sure I must have if you have it down there.

Q Were those answers to those questions true and accurate at the time you gave them?

A I am sure that they were to the best of my recollection.

Q They were made under oath?

A Pardon?

Q They were made under oath?

A At the grand jury, yes.

Q Mr. Mandel, showing you what has been marked as Government Exhibits 1034 and 35 for identification, would you examine them?

A Yes.

Q What are 1035 and 1034 for identification?

A Memos which I sent to Chester Carity.

(Continued on next page.)

T5B am JQjw 1 Mandel - direct

Q In connection with the resale program concept?

A One of them was resale requests from approximately a thirty day period.

Q Is that 1035?

A Yes, it is.

MR. DEVORKIN: I offer 1034 and 1035.

(Government Exhibit 1034 and 1035 received in evidence)

xx

MR. DEVORKIN: May I read 1034 and 1035 to the jury, your Honor?

THE COURT: Yes.

(At this point Mr. Devorkin read Government's Exhibit 1034 in evidence to the jury.)

(At this point Mr. Devorkin read Government's Exhibit 1035 in evidence to the jury.)

Q Mr. Mandel, what does active mean in this letter?

A I believe people still paying.

Q Still paying on their installment contract?

A Right.

Q And paid in full is people who have paid up fully on the contract?

A Yes.

Q Mr. Mandel, does that mean the request was a request for list of brokers who might handle resale?

A I don't recall exactly how the request was.

Q Does that mean a request from somebody seeking a profit?

A I really don't recall that. I know it's in there but I don't recall that at all.

Q Mr. Mandel, the requests from customers referred to in Government Exhibit 1035 in evidence, were they unsolicited requests from customers or were they responses to inquiries Rio Rancho Estates sent out?

A I believe they were sent by the customers.

Q Unsolicited, yes.

Q Did you ever get any response to these memos?

A Shortly after I was no longer with the company.

Q Did you ever get any response to these memos?

A No.

Q At the time you left the company had any resale program been set up?

A Not to my knowledge.

Q By the way, when you left the company in 1970 was Solomon Friend with the company at that time?

A Yes.

Q When had he started?

A I don't recall.

Q Was it shortly before you left?

THE COURT: When did you leave?

THE WITNESS: I believe it was sometime in August 1970, your Honor. Mr. Friend might have started in 1969. I just don't recall.

Q Mr. Mandel, did you know that the Albuquerque City Planning Commission had produced a study discussing the growth of Albuquerque and the direction of its growth?

A No, I did not.

Q Did you know that AMREP Corporation had a copy of that study?

A No, I did not.

Q Did you know that in 1965 AMREP Corporation had commissioned a report from a company of land planners in the southwest which discussed the growth of Albuquerque and the direction of its growth?

A No, I did not.

Q Did you know that the compnay, that is AMREP, had told that land planning company that it did not expect more than five percent of the Rio Rancho purchasers to move to Rio Rancho?

MR. RUBINO: Ojbection.

THE COURT: He said he never heard of it. How can he answer that question?

Q Did you know AMREP Company had told anyone that it did not expect more than five percent of the Rio Rancho purchasers to move to Rio Rancho?

MR. ARKIN: Objection.

THE COURT: Overruled.

A No, I did not.

Q Mr. Mandel, did you receive any bonuses of any kind besides your salary for your work for AMREP?

A A stop option.

Q Did you ever invest any of your money in land at Rio Rancho Estates?

A No, I did not.

MR. DEVORKIN: No further questions.

CROSS EXAMINATION

BY MR. ARKIN:

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Q Mr. Mandel, my name is Stanley Arkin. I am one of the defense counsel. Keep your voice up just a bit so people back here can hear you. We had some difficulty yesterday.

A I am sorry.

Q Where did you go to college?

A Where?

Q Yes.

A New York City Community College.

Q When did you graduate?

A I believe it was 1958.

Q In what area did you receive your degree?

A In associate -- I believe in the arts.

Q Liberal arts?

A Liberal I believe it was.

Q By the way, you are married, aren't you?

A Yes, I am.

Q And you have children?

A Yes, I do.

Q You now live in Florida?

A Yes.

Q You came to the company in 1966 or so?

A Yes, sir.

Q And you stayed in the company until 1970?

A Yes, sir.

Q Actually you were with the company a couple of years before 1966, weren't you?

A I was with another company.

Q That is right.

When was the first time you visited Rio Rancho?

A I don't recall, sir.

Q Would it have been sometime around 1966 or so?

A I believe '66, '67, in that area.

Q And you visited several times each year until you left the company?

A Yes, sir.

Q And each time that you went out there did you observe progress or development in the community?

A Yes, sir.

Q And you saw more buildings?

A Yes, sir.

Q More roads?

A Yes, sir.

Q And you saw the growth of the country club and the motel and things such as that?

A Yes, sir.

Q By the way, do you know whether other sales personnel were brought out to Rio Rancho to see the community?

A Yes, sir.

Q Was that a regular part of the company policy?

A Yes, sir.

Q Was the purpose of that to show the salesmen what it was they were selling?

A Yes, sir.

Q To show them the product?

A Yes, sir.

Q And to encourage enthusiasm about that particula product?

A Yes, sir.

Q By showing them exactly what was there?

A Yes, sir.

Q What is the West Side Association?

A I honestly don't know. I would assume it's an association made up of West Side people in Albuquerque.

MR. DEVORKIN: Can that last part be stricken?

THE COURT: With all the estimates he gave you on direct I will let this one in.

Q I am only asking, Mr. Mandel, because Mr. Devorkin yesterday asked you about the West Side Association and so I am asking you today if you know what it is.

A I would assumeit's an association made up of West Side people.

Q Would it refresh your recollection if I were to say to you it was made up of people who were builders and people engaged in commerce in the West Side of Albuquerque?

A Yes.

MR. DEVORKIN: Objection.

THE COURT: He is trying to refresh his recollection.

MR. DEVORKIN: He said he doesn't know. He said he assumes.

THE COURT: Now he is refreshing his recollection. He says yes.

Q Sir, in all your years with AMREP Corporation in your various capacities you never doubted, did you, that these people who sit here in the companies had every intention of developing Rio Rancho as a community in which to live?

MR. DEVORKIN: Objection.

THE COURT: Overruled.

A There was no question in my mind.

Q And you were told that many times over the period of your employment with the company, weren't you?

A Yes, sir.

Q And I take it too that having been in the business for several years, as Mr. Devorkin mentioned yesterday in his direct examination of you, that based on the development which you saw at Rio Rancho that you had no doubt that the property values at Rio Rancho were going up, do you?

A No question in my mind.

Q And they went up steadily year after year?

A Yes, sir.

MR. ARKIN: May I have Exhibit 384 please. Does somebody have that?

While you are getting that, would you get Government Exhibit 475 so I won't have to ask you later on?

Q Mr. Mandel, yesterday you recall that Mr. Devorkin showed you page 9 of this brochure which is designated Government Exhibit 384.

Do you recall that?

A Yes, sir.

Q And that portion of the exhibit had in the various comparables, that is real estate, bought at one price and sold later at a greater price; do you recall that?

A Yes, sir.

Q You believe, don't you, that the comparables, the examples given in this brochure are true, don't you?

A Yes, sir.

Q Yesterday you were also shown a document designated Exhibit 475 and has at its top the No. 117. Let me show you that. Do you recall seeing this document?

A Yes, sir.

Q Which has at the bottom of it five rules called sensible rules as to when it is wise to invest in real estate.

Do you remember that being in this document?

A Yes, sir.

Q The first rule you recall was that you should consider the location of the real estate, the property should be as close to a major city as possible.

You believe that Rio Rancho is close to a major city?

A Yes, sir.

Q And its location is a good thing from the investment point of view?

A Yes, sir.

Q And the next of the rules set forth is to review the population, the city must have a past and present history of growth.

Do you believe Albuquerque has a past and present history of growth?

A Yes, sir.

Q You don't have any doubt of that?

A No question.

Q You saw that with your own eyes?

A Yes.

Q The third rule, look into the quality of the property, pass up desert or swamps, insist on good usable land. You have seen Rio Rancho, haven't you?

A Yes, sir.

Q Would you consider it good, usable property?

A Yes, sir.

Q It's not a swamp?

A No, sir.

Q It's not under water?

A No, sir.

Q It's not desert?

A No, sir.

Q And to inquire about utilities, water,road, electricity, gas, phones should be available. You have seen Rio Rancho?

A Yes, sir.

Q Are utilities there in the developed areas?

A Yes, sir.

Q Is water?

A Yes, sir.

Q Roads?

A Yes, sir.

Q Electricity?

A Yes, sir.

Q Gas?

A Yes, sir.

Q Even telephones?

A Yes, sir.

Q Last is the price, buy under comparable land values.

Wouldn't you say the land being sold at Rio Rancho was being sold at a price under the comparable land values set forth in the brochure which I just showed you?

A Yes,sir.

MR. DEVORKIN: I object. There is no foundation that he is competent to testify that they are comparable lands.

THE COURT: He ought to ask him what he knows about those properties.

MR. ARKIN: I will ask.

THE COURT: Page 9 has a list of sales. Unless the witness knows where those prior sales were located, the location of the property of the prior sales, his opinion has no impact here.

end t

Q You are familiar with the northwest section of Albuquerque, aren't you?

A Yes, I am.

Q You now understand the difference between the northwest and the northeast?

A Yes, I do.

Q The northwest section, you are famliar with the Quaker Heights area?

A Yes, I am.

Q That is right near Rio Rancho, isn't it?

A Yes, sir.

Q You would consider that to be comparable to Rio Rancho in many respects, wouldn't you?

MR. DEVORKIN: I object unless he specifies what the foundation for comparable is, your Honor.

THE COURT: You mean the details?

MR. DEVORKIN: Yes.

THE COURT: You can do that on redirect, if you wish. I will let it in on cross.

A Yes.

Q Unless you are familiar, I take it, with Coors and Atrisco?

A Yes, sir, I am.

Q That is also in the western part of Albuquerque?

A Yes, sir.

Q It is right near Rio Rancho, too?

A Yes, sir.

Q I take it you are familiar with the southwest section of Albuquerque, that is Coors and Foothills Drive, do you know where that is?

A Yes, I am.

Q That is a little greater difference from Rio Rancho, isn't it?

A Yes.

Q About thirty or thirty-five minutes?

A Approximately.

Q Based upon the examples which you saw yesterday at page 9 in the brochures designated 384, would you say, going back to this fifth rule, weigh the price, that the land values at Rio Rancho were good buys in comparison to the ones specified there?

A Yes, sir.

Q So that all those five things were true about Rio Rancho, weren't they?

A Yes, sir.

Q You were in charge when you were the sales manager and later the marketing manager of these dinner parties, right?

A Yes, sir.

Q Part of which you had to do was to obtain the names, a mailing list for invitations?

A Yes, sir.

Q You said yesterday that one of the criteria for names to whom you would send or to which you would send -- people to whom youwould send invitations was that they could afford to buy property, is that true?

A Yes, sir.

Q The purpose for wanting people who could afford property, wasn't it, was to get responsible people?

A Yes,sir.

Q People who might relocate to Rio Rancho?

A Yes, sir.

Q And people who knew what they were doing, isn't that so?

A Yes, sir.

Q And people for whom Rio Rancho might be more suitable?

A Yes, sir.

Q Yesterday you were asked about the word leads. You know what a lead is, don't you?

A Yes, sir.

Q It is not a sinister term?

A Not in my estimation.

Q You know that the word leads is used, I suppose, by anybody in any business who sets about to sell something to somebody whom he doesn't know before or hasn't known before, isn't that right?

A Yes, sir.

Q Leads merely means the name of somebody to whom you might sell something?

A Yes, sir.

Q Anything, isn't that right?

A Correct.

Q Leads is not a word or a phrase which is used merely to sell land.

A It is not.

Q Cars, ice cream, anything, correct?

A Yes, sir.

Q You were also in charge of setting up the dinner parties physically, am I correct?

A Yes, sir.

Q Part of which you did, aside from where the tables were and the podium, and the menu, was to make sure that the proper literature was provided to the dinner parties?

A Yes, sir.

Q And by "proper literature" I take it you mean the New York offering statement; is that one of them?

A Yes, sir.

Q Was it also required that you provide the HUD report when that came into existence?

A Yes, it was.

Q Do you know what a HUD report is?

A It is a report from HUD which, if I recall right gives certain information about the development.

Q Do you know what HUD is?

A It's a federal organization.

Q And is the HUD report a federal report required to be filed with that agency?

A Yes, sir.

Q Which contained very extensive information about the property?

A Yes, sir.

Q You know what the New York offering statement is?

A Yes, sir.

Q What is that, sir?

A It is also information filed with the New York State --

Q Department of State?

A Department of State pertaining to the development.

Q What does that statement contain meaning the offering statement?

A All the pertinent information about Rio Rancho Estates.

Q That is information required by the state, isn't that right?

A Yes, sir.

Q When the information in the brochure is provided to the state, do you know what the state does with it?

A To my knowledge it reviews the --

MR. DEVORKIN: I object, your Honor, as not based on first hand knowledge.

THE COURT: Sustained

Q Prior to the time that you used any brochures or any literature, it is true, isn't it, that they had to be approved and cleared by the New York Department of State?

MR. DEVORKIN: I object.

THE COURT: Sustained. Not through this witness.

Q Do you know what an NYA number is?

A Yes, I do.

Q What is that?

A That is a number given by New York State on literature that they have reviewed.

Q Did you ever use any literature which had not been reviewed and which did not have an NYA number at those dinner parties?

A Never.

Q Every bit of it had been submitted and reviewed, isn't that so?

A Yes, sir.

Q Or you wouldn't let it go out?

A Yes, sir.

Q Indeed, you required your salesmen to make sure they only used properly authorized literature, didn't you?

A Yes, sir.

Q That was mandatory?

A Yes, it was.

Q Do you recall what you did when you hired a salesman in terms of his obligations to the company?

A The sales manager or the salesman?

Q When you hired a salesman, you made him sign a contract, didn't you?

A Yes, he did.

Q It was a written contract?

A Yes, it was.

Q In that contract he had to make certain promises?

A Yes.

Q Among the promises he made was that he would not deviate in any way from the utilization of properly approved literature, isn't that so?

A Correct.

Q And that he wouldn't do anything to bring dishonor upon the company?

A Correct.

Q He wouldn't do anything dishonest?

A Correct.

Q That was a written obligation he had?

A Yes, it was.

Q Every salesman who came aboard was compelled to sign that as a condition of employment?

A Yes, they were.

Q By you?

A Yes, sir.

Q That was part of your job to make sure they signed it?

A Yes, it was.

Q And to make sure they lived up to it?

A Yes, sir.

Q And you did that?

A Yes, sir.

Q With respect to the dinner parties, were you aware that a seven day notice was required from the New York Department of State as to the time and place of the particular dinner party to be had?

A I believe at one time it was a thirty day.

Q Later it became seven days?

A Yes.

Q They shortened the notice time?

A Yes, sir.

Q Do you know what the purpose of that notice was?

A Yes, sir, to notify and let the State Department know where you were having your dinner parties so that if they wanted to come and view your dinner parties, they knew well in advance so that they could make their proper arrangements.

Q In fact, they did attend dinner parties and monitor and inspect them, didn't they?

A Yes, they did.

MR. DEVORKIN: I object unless he was present at such a dinner party.

THE COURT: Overruled.

THE WITNESS: Yes, I was.

MR. ARKIN: Thank you, Mr. Devorkin. I forgot the question, I will ask it again.

Q Were you present at dinner parties where they were monitored and inspected by New York State Department officials?

A Yes, sir.

Q By the way, speaking of dinner parties, you said yesterday that the original script or idea came of Lou Koniecke to the company, isn't that right?

A Yes, sir.

Q Are you aware of other companies in the land development industry --

A Yes, sir.

MR. DEVORKIN: I object, your Honor.

THE COURT: It is preliminary. Let's find out where he is going.

Q Are you aware, too, that other companies utilize a dinner program or the dinner presentation as a means of selling land?

MR. DEVORKIN: I object.

THE COURT: Overruled.

A Yes, sir.

Q Other large companies on the New York Stock Exchange, isn't that so?

A Yes, sir.

MR. DEVORKIN: I object, your Honor.

THE COURT: Sustained.

Q Do you know which other companies utilized the dinner presentation?

A Yes, sir.

Q Which companies are those?

MR. DEVORKIN: I object, your Honor.

THE COURT: Are you trying to show other people who use dinner parties?

MR. ARKIN: Sure, that it is common practice.

THE COURT: It has no relevance to this case.

MR. ARKIN: Is the objection sustained, your Honor?

THE COURT: Obviously.

MR. ARKIN: Thank you.

Q A principal part of the presentation at the dinners, Mr. Mandel, aside from a very long-term investment was also a better way of life, wasn't it?

A Yes, sir.

Q A place to relocate?

A Yes, sir.

Q A place to retire to?

A Yes, sir.

Q And also the climate was emphasized a great deal?

A Yes, it was.

Q I suppose it's true to say that a large number of the sales you made were to people who live in climates which get pretty cold during the winter?

A That's correct.

Q One of the strong selling points was why suffer winters, why not move to the southwest, isn't that so?

A Yes, sir.

Q You say that -- yesterday that a portion of the presentation had to do with very long term investment.

A Yes, sir.

MR. DEVORKIN: Your Honor, that is an improper question as to form. He is characterizing the testimony.

MR. ARKIN: This is cross examination, your Honor.

MR. DEVORKIN: It is not what the testimony was. He is misstating the record.

THE COURT: The witness used the word long term investment.

MR. DEVORKIN: He did not say very long term investment.

THE COURT: You may sit down. Objection overruled.

MR. ARKIN: Read back my question.

THE COURT: His exact testimony was seven to ten years minimum.

MR. ARKIN: He said long term investment.

THE COURT: He said seven to ten years minimum in the very same sentence or the same answer in separate sentences.

(Record read)

Q You wrote the scrips which were used for a period of time by AMREP, didn't you?

A Yes, sir.

Q I take it that what you wrote in those scripts you believed, didn't you?

A Yes, sir.

Q You didn't believe there was anything dishonest in them?

A No, I did not.

Q Or you wouldn't have put your name of them?

A Correct, sir.

Q You heard the word leverage used yesterday, you were inquired about it, is that correct?

A Yes, sir.

Q You don't believe that is -- do you believe that the concept of leverage is misleading when you present it to a potential customer?

A No, I do not.

Q Anything false about it?

A No.

Q Is there anything false about the way leverage was used during these years in the scripts which you wrote?

A No, sir.

Q It wasn't designed to be misleading, was it?

A It was not.

Q Let me ask you: Do you believe that he stock market is a better investment than real estate?

A I do not, sir.

Q Do you believe the stock market is necessarily a better investment than Rio Rancho?

A I do not, sir.

Q Do you think Rio Rancho was a good investment?

A Yes, sir.

Q You honestly believe that, don't you?

A Yes, sir.

Q That is because it is a growing community?

A Yes, sir.

Q And being developed more every year?

A Correct.

Q People were never told there was any ready resale market, were they?

A They were not, sir.

Q Or they could make money overnight?

A They were not.

Q And people were not told the particular lots which they bought had utilities in place at that time?

A They were not.

Q They were told about the exchange?

A Yes, they were.

Q They were told about that right up front?

A Yes, they were.

Q There were two types of exchanges, weren't there?

A Yes, sir.

Q Do you want to tell the jury briefly, if you will, what the two types of exchanges were so we can clear up the confusion.

A One of the exchanges, if someone visited their property and they didn't like their piece of property, they were able to exchange it for any other available piece of property.

Q That was a five year limitation?

A Yes, sir.

Q Any time within five years they didn't like the particular piece of property they had, they could take that property and change it for another piece of property within that five year period, right?

A Yes, sir.

Q The second type of exchange had to do with whn they wished to build a house, am I right?

A Yes, sir.

Q That particular exchange was that if you had a piece of property where utilities had not yet been implanted and you wished to build, then you could take that piece of property and exchange it into an area with utilities?

A Correct.

Q And you became the owner of that particular piece of lot in the utility area, right?

A Correct.

Q If you had more than one lot, you could give that lot, say, for example, to a son or a daughter or a friend and he also or she also could take that lot and, change it into a utility area?

A Correct.

Q So that the right to exchange into a utility area ran along with the lot, didn't it?

A Yes, it did.

Q A person who had four lots had four lots each one with an exchange right?

A Yes, sir.

Q You also testified just a little previously about the Corrales area, that is a portion of Rio Rancho, isn't it?

A Yes, sir.

Q It is a neighborhood?

A Correct.

Q There was a period of time when people could exchange into Corrales?

A Yes, sir.

Q They had to pay a bit more money, am I correct?

A Yes, sir.

Q Do you know what that more money was for?

A It was because of the underground utilities, more improvements.

Q The sewers?

A I am sorry, when I said utilities, I meant overall sewers.

Q Underground utilities?

A Yes, sir.

Q That's because the company was providing more to that particular property than they had ever said they would to anybody or obliged to, am I right?

A Yes, you are.

THE COURT: At this point I would like to get something clear in my mind.

When you had these dinner presentations and you were selling property, were you selling property that would be known as unimproved property or were you selling both unimproved property and improved property, such as Corrales Heights?

THE WITNESS: If someone wanted to build immediately, they would be sold the improved property with all the utilities.

If not, they were sold the property that did not have all the utilities.

THE COURT: Were they aware that the property that they were buying was unimproved property?

THE WITNESS: Most definitely, sir.

THE COURT: Was it made clear to them that there were two types of property, one for building a home and one which they would have to hold as unimproved until the development reached that area?

THE WITNESS: Yes, sir.

THE COURT: Go ahead.

MR. ARKIN: Thank you,your Honor.

BY MR. ARKIN:

Q To your knowledge, was any person who wished to exchange his lot, that is, in the then unimproved area into the improved area, ever told that he could not have an even exchange?

A Not to my knowledge.

THE COURT: What do you mean even exchange?

Q Excuse me, in the exchange area without paying anything additional?

A Not to my knowledge.

Q So that a person who wanted to exchange didn't have to go into Corrales, isn't that true?

A That's correct.

Q They could have gone into unit 11 or unit 16?

A Yes, sir.

Q Corrales was at the option of the particular customer?

A Correct.

Q Going back to the dinner parties, I take it it is true that not ever person who went to these dinner parties bought, is that correct?

A Correct, sir.

Q And that you would not describe these dinner parties as being psychologically coercive or brainwash sessions, would you?

A No, I would not.

Q In fact, if anything, you would have been happier to have a greater percentage of people buy than actually did?

A Yes, sir.

Q You were asked yesterday about the policy of inviting people who had already purchased land, we will call them HSO's for shorthand, to come to the dinner parties, do you recall that?

A Yes, sir.

Q You said that the reason behind that was because you wanted to have people who were familiar with

Rio Rancho and had purchased property to come and be able to speak to people who were potential customers, am I right?

A That's correct, sir.

Q It was a part of the company policy to encourage people who owned land to go out and see their land, wasn't it?

A Yes, it was.

Q They facilitated that by having low cost tours?

A Yes.

Q Telling people to go ahead and see it?

A By all means.

Q Speaking about these tours out in Rio Rancho, you were asked about the control aspect of those tours by Mr. Devorkin. Do you remember that?

A Yes, sir.

Q You were on some of those tours, I take it?

A I met tours there, sir. I was not on them.

Q You saw how they were conducted?

A Yes, sir.

Q Were they conducted like some kind of prison farm?

A No, sir.

Q People were free to go where they wanted?

A Yes, sir.

Q They could rent cars?

A Yes, sir.

Q They could turn their heads to the left or right or look forward?

A Yes, sir.

Q Even backward?

A Yes, sir.

Q They could ask anybody whom they wanted anything in Rio Rancho or Albuquerque?

A Yes, sir.

Q No muscles?

A No, sir.

Q They were not made to go certain places at certain times all during their time in Albuquerque?

A No, sir.

Q And a large percentage of the people who came down to Albuquerque to see their property or rather Rio Rancho came down on their own, didn't they?

A Yes, sir.

MR. DEVORKIN: Your Honor, I object and ask that be stricken unless it is based on personal knowledge.

THE COURT: The man got reports regularly you brought out from them.

MR. DEVORKIN: I think that should be clarified. I don't think it is clear that there is a foundation for that particular answer.

MR. ARKIN: He asked a lot of questions on direct examination which gave me a foundation, your Honor.

THE COURT: Go ahead. The objection is overruled.

MR. ARKIN: Thank you.

Q You know, don't you, that a lot of people came down to Rio Rancho on their own?

A Yes, sir.

Q No conducted tour?

A No.

Q You mean there was no conducted tour?

A No conducted tour, I am sorry.

Q Your answers have to be reflected on a machine there.

A I am sorry.

Q When people came down within the six-month period they had a right to cancel, you mentioned that before, didn't you?

A Yes, sir.

Q You also said, and I take it you will say again, that people weren't pressured into keeping property they wouldn't want or didn't want, isn't that so?

A Correct, sir.

Q If they wanted their money back, they got it?

A Yes, sir.

Q And the solidification commission, that is, the commission a salesman got if somebody didn't turn their property back was a pretty small amount?

A A very small amount.

Q A very small amount?

A Yes.

THE COURT: Let's tell us how much so we know what it was.

A I believe if I recall either a half a per cent or a per cent maximum.

THE COURT: Of what?

THE WITNESS: Of the value of the piece of property.

THE COURT: Go ahead.

MR. ARKIN: Thank you, your Honor.

Q Was the reason that the company encouraged people who had already bought land and had already visited Rio Rancho and saw exactly what it is that they had purchased and were happy about it, the reason they were encouraged to come to dinner parties simply because it was a great advertisement who knew what they bought and were happy about it to come and speak to other purchasers?

A Correct.

Q Those people who came to those dinner parties were never told what to say to the potential customers?

A Never.

Q They weren't given a back-room session before they went into the dinner party?

A Never.

Q And they weren't paid for coming, were they?

A Never.

Q With respect to the price increases you were asked about the other day, to your knowledge, was there ever a price increase announced that did not come into being?

A Never.

Q So it was true when they said there was going to be a price increase?

A Correct.

Q Absolutely true, wasn't it?

A Yes, sir.

Q With respect to the holds, you were asked about that, too, do you remember that?

A Yes, sir.

Q Wasn't the purpose of the holds so that a salesman speaking to a potential customer would not be put in the embarrassing situation that some other salesman would be speaking about the very same piece of property to another potential customer?

A Yes, sir.

Q Your basic responsibility as the sales manager then was to make sure that only properly approved literature was used?

A Correct.

Q And that salesmen didn't deviate from that?

A Correct.

Q And that if somebody used unauthorized literature, you had to do something about that, didn't you?

A Correct.

Q What did you do about that?

A There were times I fired people.

Q Was it your responsibility to see to it that unauthorized literature was not used?

A Yes, sir.

Q Sometimes some broker did use unauthorized literature, didn't they?

A Yes, sir.

Q When it came to your attention you stopped it, didn't you?

A Yes, I did.

Q If a salesman did something which he shouldn't have done, like made a misrepresentation, what was your job?

A To make sure it never happened again.

Q If he did it again?

A He was fired automatically.

Q You fired him?

A Yes, sir. I gave the order.

Q In your experience you fired certain salesmen?

A Yes.

Q Because they had done something against company policy?

A Yes, sir.

Q It was also part of your responsibility to obtain good brokers, wasn't it?

A Yes, sir.

Q What is a good broker? You used that expression yesterday.

A A good broker in my estimation is one that is a solid citizen in the town which he is operating out of, is an individual who is financially able to conduct the business, who is not going to be pressured because of moneys into making misrepresentations, who basically is a credit to the area in which he lives.

Q And also licensed?

A That's automatic, sir.

Q They have to be licensed, don't they?

A Yes, they must.

Q Do you know what being licensed means?

A Yes, I do, sir.

Q Tell the jury what it means.

A It means in a particular state that you are in, you must fill out forms, you must also pass a test based on your knowledge of real estate in general before you can become -- first you must become a salesman.

After you are a salesman, an active salesman, and depending upon the state, I don't recall the exact length of time, you can then apply to become a broker which is naturally much more difficult and, again, it is strictly on real estate, your knowledge of real estate.

Q Also, I take it, as a condition of being licensed you must be somebody who has shown his integrity isn't that so?

A Correct, sir.

Q You were also in charge during a period of this time in what I believe Mr. Devorkin said was motivating salesmen, isn't that so?

A Yes, sir.

Q Sort of encouraging them to have enthusiasm?

A Yes, sir.

Q Enthusiasm about their product?

A Yes, sir.

Q That was done by showing them what Rio Rancho was?

A Yes, sir.

Q And how it was developing?

A Yes, sir.

Q And making them believe in Rio Rancho?

A Yes, sir.

Q You believe in Rio Rancho?

A Yes, sir.

Q Even today?

A Yes, sir.

Q You never condoned or participated or acquiesced in attempting to motivate a salesman to sell something he didn't believe in, did you?

A Never.

Q You would not, I take it -- excuse me, let me go back just a little bit.

You were also in charge of making sure that salesmen told it like it was and never told an untruth, weren't you?

A Yes, sir.

Q That was part of your job to police and see that that was done?

A Yes, it was.

Q I take it during the years you were with AMREP that you didn't believe that you were participating in something which was dishonest?

A No, I did not.

Q You don't believe any of these men here ever had in their minds they were selling something different than what they said they were?

A No, I do not.

MR. DEVORKIN: I object, your Honor.

THE COURT: Overruled. You brought out that he has worked with these people and spoke to them.

MR. DEVORKIN: I don't think he can testify what they had in their minds.

THE COURT: You brought out the contact between the two. He is entitled to answer that.

MR. DEVORKIN: His belief about what they had in their mind?

THE COURT: Mr. Devorkin, when I rule, you sit down. Don't continue arguing.

MR. DEVORKIN: Yes, your Honor.

MR. ARKIN: Just a few more questions and I will be done, your Honor.

Q Based on your experience in those years you were with the company, do you believe Rio Rancho will continue to grow?

A Yes, sir.

Q Is there any time that you know of while you were with the company that they failed to live up to a promise they made to any one of its customers?

A Never.

Q Mr. Mandel, were you proud of selling Rio Rancho?

A Yes, sir.

MR. ARKIN: That's all.

THE COURT: I think we had better stop for lunch. It is five minutes to one.

Be back at 2:15.

(Luncheon recess.)

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AFTERNOON SESSION

2:30 p.m.

(In open court - jury present.)

HOWARD MANDEL, resumed.

THE COURT: You may proceed.

CROSS EXAMINATION

BY MR. FLEMING:

Q Mr. Mandel, my name is Fleming and I represent Dan Friedman and Chester Carity.

Let me put two exhibits before you, Government Exhibit 462 and Government Exhibit 1035. 462 is a memorandum from you to Chester Carity.

A Yes, it is.

Q Dated June 16, 1970?

A Yes.

Q And captioned projects in works?

A Yes, sir.

Q Am I correct there are 13 different projects listed and then 13 additional future projects?

A Yes, sir.

Q I direct your attention to the project numbered 8. That is Hugh Hood - Fly and Buy Program.

Am I correct that Hugh Hood was in charge of housing at Rio Rancho?

A Yes, sir.

Q And the Fly and Buy Program was a program designed to encourage people to build homes at Rio Rancho?

A Yes, sir.

Q You also have number 7, the Bob Berg housing program?

A Yes, sir.

Q That also had to do with encouraging people to build homes in Rio Rancho?

A Yes, it did.

Q To become a part of the community?

A Yes, sir.

Q I direct your attention to Exhibit 1035. That is a memorandum from you to Mr. Carity?

A Yes, it is.

Q That is dated August 11, 1970?

A Yes, sir.

Q And it's captioned Rio and Rainbow resale request, am I correct?

A Yes, sir.

Q It shows that during the period of June 25, 1970 through July 31, 1970, a little over one month, am I correct in reading this as showing that Rio Rancho received requests from property owners for resale -- I better rephrase that.

They received during that period of time 68 requests from property owners for resale?

A Yes, sir.

Q 53 of those requests asked Rio Rancho if Rio Rancho could handle the resale?

A Yes, sir.

Q Five asked Rio Rancho to provide a list of brokers?

A Yes, sir.

Q Five were interested in getting back the amount paid in?

A Yes, sir.

Q And five were interested in getting profit, is that right?

A Yes, sir.

Q A total of 68 for that four, five week period of time.

Did that approximate the number of requests for resale that Rio was receiving monthly during this period of time, is that a fair approximation, typical?

A I believe it was high.

Q This month is higher?

A I believe so.

Q I will put it another way. Were the amounts or were the number of requests for resale from property owners in 1970, did they run monthly higher than 65 or 68 per month?

A No, they did not, to my knowledge.

Q Am I correct that that would be about 780 multiplied by 12, 780 requests for resale during the period 1970?

A Right, sir.

Q Is that a fair approximation to your recollection?

A I was there only until August.

Q For the period before that?

A I would say that's approximately correct.

Q Am I correct that in 1970 there were between 35 and 40,000 home site owners? That is in Rio.

A I believe in that range, yes.

Q And that figure, that is seven or 800 requests for resale out of 35 or 40,000 home site owners, was the basis for your testimony that the requests for resale were minimal?

A Yes, sir.

Q A ver few questions with regards to the sales dinners.

Am I correct that invitations were mailed to the sales dinners?

A Mailed out for the sales dinners, yes, sir.

Q To different people?

A Yes, sir.

(Continued on next page.)

T1b

Q Am I correct that approximately one or two percent of the people who received the invitations wrote back or responded to say that they would come?

A Yes, sir.

Q So that 98 percent of the people who received the invitations didn't even write back?

A Right, sir.

Q Am I correct that of the one or two percent of those invited who said they would come in fact only about 30 or 40 percent of those actually came?

A I would say probably a little closer to 50 percent.

Q Between one and two percent accepted the invitation and of those that accepted only half actually came?

A Yes, sir.

Q Of those that actually came did they all buy?

A No, sir.

Q Is it fair to say a majority did not?

A Percentage-wise, yes, sir.

Q Did AMREP or Rio Rancho provide car service or transportation to people who said they wanted to come to the dinners?

A No, they did not, sir.

Q Did you assume therefore that if someone actually came to the dinner they had an interest in the purchase of land?

A Yes, sir.

Q Of course, that was land in New Mexico?

A Yes, sir.

Q Do you recall if there was a Rio sales office in Alabama?

A I don't recall, sir.

Q Georgia?

A I believe there was a sales office in Georgia, yes.

Q Was that not for Silver Springs?

A I believe it was for Silver Springs.

Q In Atlanta?

A Yes, sir.

Q And did not include Rio, is that correct?

A It only sold Silver Springs, yes.

Q How about North Carolina, South Carolina, Mississippi and Georgia, do you recall those states?

A For Rio Rancho, no, sir.

Q There were none?

A No.

Q And those were hot weather states, weren't they?

A Yes, sir.

Q Let me show you 475-A -- I will read it. 475-A is dated January 22, 1965. It is addressed to Mr. Joshua Soske, Jr., Tenth Floor, Balboa Building, 593 Market Street, San Francisco 5, California.

Do you know who Mr. Soske was?

A No, I do not.

Q You don't know whether he was an attorney or not?

A I do not know the gentleman.

Q Then I can't ask you the question.

MR. FLEMING: I have nothing further.

THE COURT: Any further cross?

Redirect.

REDIRECT EXAMINATION

BY MR. DEVORKIN:

Q Mr. Mandel, Mr. Fleming asked you about the fly and buy program. Was that program discontinued at some time because it was unsuccessful?

A Not to my knowledge.

Q It was still going while you were with AMREP?

A I believe so, yes, sir.

Q How long had it been going when you were with AMREP?

A A short time it was initiated prior to my leaving AMREP.

Q A couple of months?

A I believe it was a couple of months, yes, sir.

Q You testified on cross examination with respect to questions by Mr. Arkin that an important criteria for selecting brokers was that the broker was a solid citizen in the community.

A Yes, sir.

Q Do you know who Leonard Geller was?

A Yes, sir.

Q He was head of what became the largest sales office for AMREP, correct?

A Yes, sir.

Q Was Leonard Geller a solid citizen in the community?

MR. ARKIN: Objection.

THE COURT: Overruled.

A To my knowledge he was.

Q Didn't you know that Leonard Geller had been convicted of fraud?

A When he was hired, no, I did not.

Q There came a time --

MR. ARKIN: Objection.

THE COURT: Wait a second. You can limit it to when he hired him. That was the question asked on cross.

Q It was important, was it not, that the broker remain a solid citizen at all times, that your brokers be solid citizens?

A Leonard Geller was not a broker.

Q He was head of your largest office, wasn't he?

A He was not a broker though.

Q Was he head of your largest office?

THE COURT: The question asked by Mr. Arkin was the selection of a broker, the one who sold to the public.

Q Did Mr. Geller sell to the public?

A Yes, he did.

Q He gave speakers presentations?

A Yes, he did.

Q He ran a large sales force to the public?

MR. ARKIN: I object. If he is going to go into that let's have a side bar.

THE COURT: Sustained.

Q How large was Mr. Geller's sales force?

A It was not his sales force.

Q The sales force he supervised.

A It was in conjunction with another individual.

Q Peter Miller?

A Yes, sir.

Q How large was that sales force?

A At one time they had I think four or five different sales teams.

Q It was important for such individuals to be solid citizens, wasn't it, just like brokers?

MR. ARKIN: Objection.

THE COURT: Sustained.

Q You testified on cross examination about some of the examples on page 9 of the brochure "This is My Land", which is Government's Exhibit 384, correct?

A Yes, sir.

Q Mr. Arkin asked you about some examples on those pages and you said they were comparable to Rio Rancho?

A Yes, sir.

Q Let me ask you about Example A in the northwest section. Is that example comparable to Rio Rancho property?

MR. ARKIN: I Object. I did not ask about that example.

THE COURT: It is all right. He may continue.

You opened the door here. Obviously you picked a few out. He is entitled on redirect to take the others to test the witness' credibility.

A As I recall, yes, of having seen these various areas.

Q The property reflected by Example A is comparable to Rio Rancho Estates?

A In that vicinity, yes.

Q By the way, New York offering statements that Mr. Arkin asked you about were available only in New York, correct?

A The New York offering statement?

Q Yes.

A Was available in New York, yes, sir.

Q And only in New York, correct?

A Yes, sir.

MR. FLEMING: Can we have an instruction, if your Honor please, that that was the only place it was supposed to be available.

THE COURT: I don't know. How can I give an instruction about which I know nothing.

Q Mr. Mandel, when people bought this property for investment, they were relying, weren't they, on the development reaching their property at some point?

MR. ARKIN: Objection.

THE COURT: Overruled.

A Pardon me?

Q When people bought this property for investment they were relying on development reaching their particular property at some point?

MR. FLEMING: I know you have overruled Mr. Arkin's objection, your Honor.

THE COURT: I overruled yours, too.

MR. FLEMING: I knew you were going to. I was wondering if I could say something at the side bar.

THE COURT: All right.

(At the side bar)

MR. FLEMING: I just don't understand -- my problem is how can he really read minds? How can he testify.

THE COURT: Because Mr. Arkin had him read his mind.

MR. FLEMING: The purchaser's mind?

THE COURT: Sure. Mr. Arkin asked the question.

(In open court)

BY MR. DEVORKIN:

MR. DEVORKIN: Would you read the question back to the witness, Mr. Reporter.

(Record read)

A I can't answer that because I never personally sold property.

Q Didn't you believe that people were relying on that?

A Not necessarily.

Q But many people were, weren't they?

MR. FLEMING: Object to that.

THE COURT: Wait a second. I asked you a question during cross examination to clear up what the sales contentions were. You said there were two kinds of property, one for immediate housing buildings and one where people bought awaiting the development by Rio Rancho to reach that area.

A Future development.

THE COURT: That is right. That is the question you are being asked now.

A Yes.

Q They were also relying on their ability to resell that property at a profit, weren't they, if they were buying for investment?

A I would have to say at some point, yes.

Q That is what increasing value means for an investor, doesn't it?

A Yes.

Q If an investor cannot resell his property, he doesn't have a profitable investment, does he?

MR. ARKIN: Objection.

MR. HOFFINGER: Objection.

THE COURT: Sustained. The implication of that against the testimony so far is unfair, Mr. Devorkin.

Q When you were selling Rio Rancho properties, you testified on cross examination about your various beliefs in the quality of the investment, the quality of Rio Rancho, your belief in the honesty of the sales presentations and so forth, correct?

A Yes, sir.

Q When you were selling this property or helping to sell this property, didn't you believe that if an investor could not resell his property he didn't have a profitable investment?

MR. ARKIN: Objection.

THE COURT: Sustained because ready resale he denied.

MR. DEVORKIN: I am sorry, your Honor.

THE COURT: Ready resale, that means tomorrow.

MR. DEVORKIN: I am saying if he couldn't sell it at all at a profit, he didn't have a good investment.

Q Isn't that correct, Mr. Mandel?

THE COURT: If he could never sell it ten years from now at a profit? How does he know? How could anybody testify to that. I can buy AT&T today and lose money ten years from now.

Next question.

Q Mr. Mandel, you were not aware of any profitable resales of Rio Rancho land, were you?

A Not to my knowledge.

Q Did you ever instruct salesmen to tell purchaser that?

THE COURT: Tell what?

Q That you were not aware of any profitable resales?

MR. ARKIN: Objection.

THE COURT: Sustained. You know my pretrial rulings.

MR. DEVORKIN: I am just testing the witness' intent, your Honor.

THE COURT: You know my pretrial rulings. Sustained.

Q You stated on cross examination that land investments were better than the stock market, correct?

A Yes.

Q I take it that means you thought Rio Rancho was also a better investment than the stock market?

A Yes.

Q However, you made money on your investments in AMREP stock, didn't you?

A Yes.

Q Did you ever invest any of your money in Rio Rancho?

A No.

Q For any purpose?

A No.

Q You testified on cross examination that you never doubted that AMREP would develop all of its Rio Rancho properties, the full 91,000 acres, correct?

A Yes.

Q Did you ever discuss with any AMREP officer how long it would take to develop all of the 91,000 acres?

A No, I did not.

Q Never in the entire time?

A No, I did not.

Q How many acres did Rio Rancho have in 1969?

MR. FLEMING: Your Honor, I think this is beyond --

THE COURT: Sustained.

Q Do you know how many lots there were in 1969?

MR. FLEMING: Same objection. Outside the scope.

THE COURT: Sustained.

Q You testified that the development was increasing rapidly, correct, on cross examination?

A Yes, sir.

Q That was one of the reasons why you had such faith in the 91,000 acres being fully developed?

MR. ARKIN: Objection, your Honor. He didn't testify that way.

THE COURT: I didn't hear him say rapidly. It was developing.

MR. ARKIN: He didn't say 91,000 acres either, your Honor.

THE COURT: He said the community was developing.

Q Mr. Arkin asked you about every time you went out there you saw more development, right?

THE COURT: And he said yes, a golf course and he saw Corrales Heights.

A Yes.

Q Was it developing rapidly?

A I don't know what you mean by rapidly.

Q How fast do you think it was developing?

A I felt that it was developing at a very good pace in conjunction with the economic conditions.

Q How many houses were at Rio Rancho in 1969?

A I don't recall.

Q Let me show you a HUD property report, Government's Exhibit 799 for identification. Turn your attention to page 8, question 14, please.

A Yes.

Q Does that refresh your recollection about how many houses there were at Rio Rancho as of April 28, 1969?

A No, it does not.

Q Weren't there about 300 houses there, Mr. Mandel?

MR. ARKIN: Objection, your Honor.

THE COURT: He says it doesn't refresh his recollection.

Q How many houses do you think there were in 1969?

MR. ARKIN: Objection.

THE COURT: Sustained.

Q I believe you testified -- withdrawn.

You say that Rio Rancho was developing at a good rate, I believe.

A I don't recall the exact word. I might have said that, yes.

Q But you did testify that it was no more than five percent developed when you left the company, correct?

A I believe I said that.

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Q That was eight years after Rio Rancho lots were first sold, wasn't it?

A Approximately, yes.

Q All this time Rio Rancho lots were being sold as an investment on an eight to ten year range of time, weren't they?

A Of a minimum, yes, sir.

Q By the way, do you know what the Albuquerque population was in 1969?

A I don't recall if it was 300,000 , 350,000, something in that area.

Q Something around there?

A I believe something to that effect, 400,000, in that range.

Q The City of Albuquerque was smaller in size than Rio Rancho, wasn't it?

A Yes, sir.

Q In 1969 or beginning in 1969 Rio Rancho bought another 37,000 acres, didn't they?

MR. ARKIN: Your Honor, this is not proper redirect.

THE COURT: Sustained.

Q Yiu testified on cross examination by Mr. Arkin that when you wrote these scripts you believed everything contained in the script was accurate, correct?

A Yes, sir.

Q Otherwise you wouldn't have put it in the script, right?

A Yes, sir.

MR. DEVORKIN: May I just have a moment, your Honor.

(Pause.)

Q You wrote in that script that, "But whether you prefer to live there or invest in its future, you can make a great deal of money and that's what we are going to talk about here this evening, making a great deal of money because I am assuming that everybody likes to make money."

Correct?

A Yes, sir.

Q You also said that Albuquerque only happens to have one very serious problem and that problem happens to be to our advantage. Albuquerque is bursting at the seams, but the city is surrounded. Albuquerque's expansion is blocked on three sides by high mountain ranges and government reserved lands on which they cannot built. There's only one direction in which Albuquerque can expand, to the northwest, and that's precisely where Rio Rancho Estates is located.

Correct?

A Yes, sir.

Q If you had known when you wrote that script with those words that the planning company that AMREP hired told AMREP that -- and I quote -- "despite" --

MR. ARKIN: I object. It is not in evidence at the present time. He asked that question on direct examination.

THE COURT: He said he wasn't even aware of it on direct.

MR. FLEMING: It is also irrelevant to the question that was asked of him.

MR. DEVORKIN: Your Honor, may we approach the side bar on this?

The witness testified before --

THE COURT: I know what he testified to.

MR. DEVORKIN: About his beliefs and his honesty.

THE COURT: He has already testified on direct to your question that he didn't know that so why ask him again.

Q My question, Mr. Mandel, you recall the questions I asked you on direct about the planning commission study and about the AMREP hired company study? Do you recall those questions?

A Yes, sir.

Q Do you recall your answers?

A I didn't know about them.

Q If you had known about those facts, would you have written that in this script?

MR. ARKIN: Objection.

THE COURT: Sustained.

MR. FLEMING: I ask to strike the word fact from that question.

THE COURT: I sustain the objection.

MR. DEVORKIN: I have no further questions.

THE COURT: You may step down.

THE WITNESS: Thank you, your Honor.

(Witness excused.)

THE COURT: Next witness.

MR. KAUFMAN: The government calls Peter Zaknich.

XX PETER ZAKNICH, called as a witness by the government, being first duly sworn, testified as follows:

MR. KAUFMAN: May I proceed, your Honor?

THE COURT: Yes.

XX DIRECT EXAMINATION

BY MR. KAUFMAN:

Q Mr. Zaknich, how old are you?

A 53.

Q Can you put your hand down so we can all hear you back here. It is important to keep your voice up, okay.

Are you employed?

A I just sold my business.

Q So, in other words, you are not employed now?

A At the moment, no.

Q What kind of business were you in?

A I had a franchise, Century 21.

Q What type of franchise business was that?

A Providing services for real estate -- independent brokers.

Q Did you actually sell real estate yourself?

A No, sir, I didn't.

Q How long had you been in that business?

A I would estimate about a year and a half.

Q Have you ever worked for AMREP Corporation?

A Yes, sir, I have.

Q During what period of time did you work for AMREP?

A From 1967 to 1971.

Q What is your educational background?

A Business administration and Teachers College.

Q Graduated from Teachers College?

A Glassboro.

MR. ARKIN: May we have the answer repeated, your Honor. I couldn't hear it.

THE WITNESS: Glassboro.

THE COURT: You have to keep your voice up. Everybody has to hear you at the back table.

Q Without necessarily specifying what years, can you just tell us what some of the jobs have been that you have had since you graduated from college?

A I was in the hardware industry in sales.

In the orthopedic industry in sales.

In the land installment sales.

Q What was the first company that you worked for in which you were involved in the sale of land?

A Gulf American Corporation.

Q Is Gulf American Corporation also known as GAC?

A Yes, it is.

Q Did you leave GAC to go to work for AMREP?

A I didn't leave them to go to work for AMREP. I left GAC and then went to work for AMREP.

Q That was about 1967?

A The end of the year of '67.

Q What business was AMREP engaged in?

A The selling of land in Florida and New Mexico.

Q What was the name of the land that AMREP was selling in New Mexico?

A Rio Rancho Estates.

Q What was the name of the land it was selling in Florida at that time?

A Rainbow Lakes Estates.

Q Can you tell us what the circumstances were of your going to work for AMREP?

A I had an individual who worked with me at Gulf American Corporation who was in Philadelphia, and I don't recall the occasion as to how it was as to how he got in touch with me, but we communicated with one another and he indicated that he had taken on a responsibility as a consultant for the AMREP Corporation and that they were looking for people and that he would like for me to visit with them and determine whether or not we could be married.

Q By married I assume you mean employed?

A Go to work for them.

Q Did you visit some people from AMREP?

A Within a matter of a couple of days, I visited with, first, Mike Roberts and then ultimately with Mr. Carity.

Q Where was this meeting?

A In New York City.

Q Do you recall where in New York?

A 16 West 61st Street.

Q What was that address?

A I didn't hear you.

Q Was that AMREP headquarters?

A Yes, it is.

Q Who is Mike Roberts, if you know? What was his position in the company?

A As I recall, he had something to do with personnel.

Q What was Chester Carity's position in the company?

A He was a vice president.

Q Do you see Chester Carity here in court today?

A Yes, I do.

Q Can you please point to him?

A He is that good looking fellow sitting right there (indicating).

The one with the gray suit and the blue tie.

MR. KAUFMAN: Let the record indicate that Mr. Zaknich has pointed to Mr. Carity.

Q Did you have a conversation with Mr. Roberts and Mr. Carity at that time?

A I had a conversation with both of them, yes.

Q Can you tell us what you said and what they said to the best of your recollection?

A In the discussions with Mr. Roberts, he quizzed me on what I had done with Gulf American Corporation and my visit with him was resonably brief and ultimately I saw Mr. Carity and we also discussed the people who had come from Gulf American Corporation and the tenure of time that some of these people had had. Not all of the results with Gulf American people had been favorable.

Q With respect to the job you were being interviewed for, can you tell us what the conversation was?

A The conversation principally was one where Mr. Carity was searching out whether or not, in fact, I could fit into the AMREP organization and the possibility of selling product.

Q What capacity was being discussed for you to fit in the AMREP Corporation?

A It was somewhat ambiguous, but it was a position of some form of management,either a branch manager or something beyond and above that.

Q What particular location was being discussed in terms of your immediate employment?

A There were no specifics at that time. As a matter of fact, in our conversation -- and there wasn't really an assurance at that particular meeting that in fact I did or was going to get a job but I think one of the things I discussed with them, the possibility of determining whether or not we could work together in perhaps taking on an office that was low on performance or had productivity problems and have an opportunity of getting into that and determining where we would go from there.

Q So I gather then that nothing was definitely resolved at that meeting, is that correct?

A No, sir, there wasn't. I returned home after that meeting.

Q Where were you living at that time, by the way?

A 517 Covered Bridge Road, Cherry Hill, New Jersey.

Q Is that near Philadelphia?

A Yes, sir, it is.

Q What happened after you had that meeting in terms of your relationship with AMREP?

A Ultimately the consultant, Lou Cossman, called me on the phone and indicated that everything was favorable and to come to work.

Q When he said come to work, what did that mean?

A It meant to come to the Philadelphia office which was his home base at that time and to spend some time there working with him and other people that he had just recruited and hired.

Q Did you spend much time at the Philadelphia office?

A As I recall it was very short, a week or two at the most.

Q What happened at the end of that week?

A I went to St. Louis with Mr. Cossman.

Q What was the purpose of your going to St. Louis?

A At that juncture I think that either the negotiations had been completed or negotiations were under way to buy the St. Louis office or have AMREP actually take over that office as an owned and operated office.

Q When you went to St. Louis was there an office there that was selling Rio Rancho land?

A Yes, there was.

Q At the time that you arrived in St. Louis was it an owned and operated sales office?

A I am not too clear on whether it was or not. It ultimately did become owned and operated by AMREP if it had not been.

Q What was the name of that St. Louis sales office?

A RMT Realty.

Q I gather RMT Realy sold Rio Rancho land to the public, is that correct?

A Yes, sir, they did.

Q Over what geographical area?

A Throughout Missouri. Principally they were doing it in the not too distant area outside of the St. Louis metropolitan area.

Q And the time that you arrived at RMT Realty about how many sales people worked there?

A I guess four or five people were there.

Q When you first arrived at RMT Realty were you officially on the AMREP payroll?

A No, I subsequently learned that I wasn't.

Q When did you finally get on the AMREP payroll?

A AMREP took care of paying me from the time that I thought I was on the payroll right on through. However, Mr. Cossman had indicated that I was hired and everything was cleared in terms of pay and what my responsibilities and so forth were and I don't recall whether it was two, three weeks after I was in St. Louis I ultimately received a telephone call from New York City -- I am not sure whether it was Mr. Friedman or Mr. Mandel --

Q Keep your voice up.

A I am not sure whether the phone call was Mr. Mandel or Mr. Friedman but I was summoned to New York and I was, at that time, told that in reality that I had been working but had really not been hired.

Q Were you hired at that time that you came to New York? That's formally.

A At the time that I was brought in?

Q Yes.

A Yes, sir, I was.

Q And who did you meet with when you came in to New York?

A You mean had meetings with?

Q Yes.

A I had meetings with Mr. Friedman and Mr. Mandel at that time.

THE COURT: Which Friedman?

Q When you say Mr. Friedman, who are you referring to?

A Dan Friedman.

Q Do you see Mr. Dan Friedman in the courtroom?

A I do.

Q Would you please point him out?

A He is right behind you.

Q In the white shirt, dark suit?

A Yes, sir.

MR. KAUFMAN: Let the record reflect that Mr. Zaknich has identified Dan Friedman.

THE COURT: Yes.

Q Who is Mr. Mandel?

A Who is he?

Q Who was he at that time?

A He was a supervisor of sorts in marketing at that time.

Q What occurred during your stay in New York?

THE COURT: Be more specific.

Q How long were you in New York when you were summoned to New York and were formally hired?

A As I recall it would have been at least a week.

Q Did you receive any training or orientation during that period of time?

A First of all, it was cleared that I was put on the payroll.

Q After that was cleared?

A And the amount of money and so forth that I would be receiving and what my responsibilities would be at that particular juncture.

Q Let's stick with that. How much money were you making?

A I don't recall now.

Q Was it salary or was it commission or was it both?

A At that particular time it would have only been a salary.

Q What were your responsibilities?

A To return to St. Louis and to take over that office and to create a productive office.

Q You were the branch manager of RMT, is that right?

A You could say that.

Q Was that your title or was it some other title? I don't want to say something that's not accurate.

A I would guess that was my title. I think it was.

Q Once all that was resolved what else happened during your meetings here in New York at AMREP?

A Mr. Friedman and -- Mr. Dan Friedman and Mr. Howard Mandel and I were in sessions going over the AMREP manager manual.

Q When you say the AMREP manager manual, can you describe what that was?

A That was the policy of the company regarding how an office was operated or how one would have opened up, what the conditions were regarding teh going out and setting up party locations, the costs involved, the type of machinery and equipment to put into an office, the amount of money to pay for square footage, anything that related to running an office away from the New York scene.

Q Did it also include subject areas such as running the dinner parties?

A There were topics regarding how to do that, yes.

Q Were any scripts included in that manual?

A I am not sure that the script was part of the manual or an individual parcel of paper.

Q Who gave you the manual?

A It came about with both of the people that I mentioned, with Dan Firedman and Howard Mandel. Who physically handed it to me I don't recall.

Q Do you recall who gave you the script?

A The script could have been one of three people.

Q Who were those?

A Either Cossman, Dan Friedman or Howard Mandel.

Q During your stay in New York and your meetings with Mr. Friedman and Mr. Mandel did they review that manual with you?

A Yes, sir, they did.

XX (Government Exhibit 1200 marked for identification.)

Q Mr. Zaknich, I show you what has been marked Government Exhibit 1200 for identification and ask you if you can identify that.

A The cover I can.

Q Can you identify that?

A Yes, I can.

Q Is this something that you have recently turned over to the government?

A Yes.

(Continued on next page.)

Q Can you tell us what this is?

A That is the procedure manual.

Q Was the manual contained in this actual black hardcovered notebook when you got it? That is back in 1967.

A I am not sure that it was. It was in one like that if that isn't it. They generally were black covers.

Q Are some of the pages in here material that was added to the manual after you first received it?

A Yes.

MR. KAUFMAN: The government offers 1200 for identification, your Honor.

VOIR DIRE EXAMINATION

BY MR. FLEMING:

Q When did you produce that to the prosecutor?

A This week.

Q Can you remember when?

A I am not sure whether it was Tuesday or Wednesday or Thursday.

Q Did you testify that the manual, this manual, is not the manual which you received --

THE COURT: The cover isn't. That is what he was talking about. He is not sure whether the cover is the same.

Q Am I correct the contents of the manual are different or enlarged from the time you received it in 1967?

A There may have been some papers added to that, sir.

Q For example, here is a clipping from Congressional Record, September 9, 1968.

A Right. That would have been added. That was inserted in there. That was not inserted there this week.

Q I understand that. I am just saying, how much of this did you receive in 1967 as opposed to adding materials after you received it?

A I would say most of it was what I had received at that time, sir. Most of it would have been what I received at that time. Most of any addition to that manual probably would have been in the first six months to a year that I was with the company.

THE COURT: Where did you receive the additions? Who gave them to you?

THE WITNESS: Those came through the mail.

THE COURT: From the company?

THE WITNESS: Yes, sir.

THE COURT: Any objection?

MR. FLEMING: No objection.

(Government Exhibit 1200 recei ed in evidence)

xxx

DIRECT EXAMINATION CONTINUED

BY MR. KAUFMAN:

Q At the time that you had this orientation session in New York, had you previously attended any Rio Rancho sales dinners?

A Previous to my visit in New York?

Q Yes,prior to your visit to New York.

A Yes, I did.

Q Where was that?

A If I am not mistaken it would have been in Philly at the time that you were down there with Mr.

Q Please keep your voice up. I am having difficulty hearing so I guess some of the jurors are.

In Philly at the time that you were down there with Mr. Cossman, is that right?

A Yes, I was.

Q Did you attend any dinners while you were in St. Louis for that few weeks before you came to New York?

A Yes, I did.

Q While you were in New York did you attend any dinners?

A I believe I attended one.

Q Do you recall who you attended that dinner with?

A I am not sure whether it was Peter Miller or Leonard Geller.

Q Who were Peter Miller and Len Geller?

A They were the management people at ATC Realty.

Q Was ATC Realty the local broker in the New York Metropolitan area?

A They were the Rio Rancho sales organization for the New York area. That is the New York City area.

Q How did the dinner in New York compare with the dinners that you had attended in St. Louis in terms of format and content?

A Very similar.

Q Very similar?

A Yes.

Q Were movies shown?

A Yes.

THE COURT: Why don't you ask him what went on? He can say the cities were similar without knowing what happened is a useless answer.

Q Can you tell us an overall view of what happened at the dinners?

A Taking it right all the way through?

Q In terms of format what happened when the people first walked in --

THE COURT: Describe what happened at a dinner from the time you arrived to the time you left. Take any one you want. You say they were similar.

THE WITNESS: Generally a Rio Rancho dinner party, the setup tiem was around six o'clock. The guests arrived at approximately seven o'clock. They were seated at tables. They signed a register.

Q Was there a preferred seating arrangement?

A Well, couples were initially given to each one of the marketing people on the scene.

Q Was there a company policy in the way that the room wasto be set up in terms of tables and locations?

MR. FLEMING: I am sorry to interrupt. I understand the witness was going to describe the dinner.

THE COURT: Don't do that, Mr. Kaufman.

Q Continue, Mr. Zaknich.

A When they arrived around seven o'clock they were seated and each one of the marketing people there would get a unit in chronological order according to the up system.

Q When you say the up system --

A After they received one they would start at the beginning and get the second couple. They were seated at a table with a sales person. The selling person at the table would attempt to become friendly with these people, develop a rapport. The dinner was scheduled to start at 7:30. The dinner started and just prior to the dinner starting there would be a short introduction from the podium by the speaker of the people on the floor and a film discussing or covering Albuquerque. It was brief. It was five, six, seven minutes. Dinner was served.

At the conclusion of dinner the speaker would come back on again, show a film and discuss the Rio Rancho sales program.

Q How long was that second film?

A Somewhere in the twenty-minute area, above twenty.

Q What happened after the second film was shown?

A At the conclusion of that then the actual sales took place, holds were announced and the marketing people began to se-l the prospects given parcels of land.

Q To go back to the beginning, was there company policy as to how the room was to be arranged in terms of seating?

THE COURT: Can we use the word directive rather than policy? I can't conceive of policy, as I understand policy to be involved. I could see a directive being given to a manager as to how he was to run it.

Q   Were there directives or regulations or certain procedures that were supposed to be followed in terms of setting up the room for the dinner?

A   There were recommendations as outlined in that manual as to h ow to go about doing it so that the people who were attending these dinners could physically see the screen and the marketing people would be in a position to be able to work with both units.

Q   Does this page reflect the recommended setup of the room?

MR. FLEMING: Page number?

MR. KAUFMAN: It does not have a page number unfortunately.

MR. FLEMING: Could we mark it?

THE COURT: Let's get through with the answer.

A   That was the layout of the dinner.

MR. KAUFMAN: Can we mark this page 1200-A.

(Government Exhibit 1200-A marked for identification)

MR. KAUFMAN: The whole manual is in evidence and I guess it is not for identification?

THE COURT: Right.

(Government Exhibit 1200-A received in evidence)

Q Mr. Zaknich, I notice in these little rectangles designating the seats there are initials WH&S. Do you know what that refers to?

A In that particular instance the selling person happened to be a man and the man was sitting on either side of the sales person and the wife sitting next to the husband.

Q Was that a recommendation of the company in terms of where the husband and wife sat in relation to the salesman being a man or a woman?

A It was a recommendation, yes.

Q And if a sales person was a woman?

A If she -- if the sales person were a woman then the reverse order would take place. The woman would be sitting next to the woman and the man furthest away.

MR. KAUFMAN: If I may just display this page to the jury, your Honor.

THE COURT: I think it is unnecessary. Next question.

Q . Mr. Zaknich, you said once the people came in and were seated there would be a short period of getting to know the customer, is that right?

A Yes.

Q Was any tool used in connection with getting to know the customer?

A There was a survey form that was used in order to have discussion with the prospect and to get input in determining more about the prospect. This was done in a low profile way so that there was an opportunity for the selling person at the table to have an opportunity of establishing a warm rapport with the prospect.

(Government Exhibit 1200-B received in evidence)

Q I show you what has been marked as page 1200-B of the manual and ask if you can identify that page.

A I can.

Q What is that?

A That is one of the survey forms that were used.

THE COURT: Isn't that already in evidence?

MR. KAUFMAN: I believe as a separate document, your Honor, but this is part of the manual and I just wanted to have him identify it.

Q Mr. Zaknich, have you read over the script that is contained in Government's Exhibit 1200 recently?

A Today.

Q Is this script an accurate reflection of what was said by the speakers at the dinner parties that you attended?

A Fundamentally that was the script that was used. The reference, perhaps, to Albuquerque facts or updating of facts would again age that document, but conceptually that was the presentation.

Q You mean in terms of population of Albuquerque, that would be updated from time to time, is that right?

A That's correct, different developments, different actual happenings that were taking place at the product.

Q But other than those factual updates, this is the script that is an accurate representation of what was said by the speakers, is that correct?

A Yes, it is.

Q I don't believe I asked you, but what was Dan Friedman's capacity at AMREP when you talked to him in New York?

A I believe he was controller at that time. You did ask me official title?

Q Yes.

At the dinner parties that you ran in Missouri, that RMT ran, how were the people invited to those dinner parties?

MR. FLEMING: Can we fix a time, your Honor?

THE COURT: I gather -- was this before he went back to be manager or before he came to New York to be made manager.

MR. KAUFMAN: I will designate the time, your Honor.

Q When you returned to St. Louis to run the RMT office, how long did you remain as the manager of RMT?

A Somewhere between three, four or five or six months.

Q Would this have gone into 1968 then? I believe you said you started with AMREP in late 1967.

A This is correct. It would have carried over until the early part of 1968.

Q During that time RMT was selling Rio Rancho land to the public at these dinner parties, is that right?

A Yes, it was.

Q How were people invited to those dinner parties?

A People were sent invitations in the St. Louis area.

Q Do you know -- excuse me.

A And they responded by sending back RSVP's which were received at the local office.

Q Do you know who sent out the original invitations?

A Do I know?

Q Yes.

A No, sir, I do not.

Q Was it done at the RMT office?

A It was not done at RMT.

Q Was it done out of the AMREP office in New York, if you know?

MR. FLEMING: He said he didn't know.

Q Do you know?

A I am not sure that they did it or they had a firm do it.

THE COURT: Wait. I gather there is a distinction between picking the names to whom invitations would be sent and the physical typing of a letter, stuffing it in an envelope, addressing it and mailing it?

THE WITNESS: There is.

THE COURT: Great. Since there is, who picked the names to whom the letters were sent, if you know?

THE WITNESS: I have no idea.

Q Was it done at the RMT office as far as you know?

A No, it wasn't.

Q The responses --

A May I qualify that answer?

Q Go ahead.

A We did do some mailing out of RMT, but not relating to invitations.

Q I understand.

A If RSVP's were low, we would invite people to these dinner parties whether they be homesite owners or friends or invite people out of the phone book in that area that the dinner reception was being held.

Q When you say when RSVP's were low, what do you mean, by people responding to the invitation?

A The response to the mailing that was sent from wherever.

Q What would be considered a low RSVP result? Was there a cutoff line? Was there a minimum number of people?

A The attempt was to get two units per selling person at a dinner party.

Q When you say two units, does the unit refer to a customer?

A A unit is a husband and wife. The physical unit. If you were single or widowed, we would be searching out just one person.

Q I gather from what you said that if you did not receive a sufficientnumber of RSVP's then RMT Realty sent out invitations or something in the nature of an invitation.

A The entire team that was there would respond in order to have people to sell to or talk to.

Q Was there a term for doing that?

A It was called boost.

Q B-o-o-s-t?

A Yes, that's correct.

Q How did you decide, how did RMT decide who would be invited to bring up the attendance at the dinner?

A How would we determine that?

Q Yes.

A We had homesite owners on -- we had a file of homesite owners. We had a file of people who attended and did not buy.

We also would attempt to take a cross-directory and mail to people.

Q When you say a cross director, what do you mean by that?

A A directory that breaks down streets and addresses and names of the people on those streets.

Q A special kind of telephone book or something?

A I think it is a Rubin, Donnelly. I am not sure of what it is called, the correct name is. I know that we refer to it as a cross directory.

Q How many dinner parties a week were conducted by RMT?

A I can give you a monthly total easier than a weekly total.

Q Fine.

A Generally between 19 and 21 parties per month. Parties that were scheduled for RMT Corporation.

Q Were additional parties held besides those that were scheduled?

A If the response -- if we had the good fortune of having a greater response and we had more than two units per selling person, then we would attempt to add on additional parties and schedule those people at another date, generally a weekend.

Q Did you participate in those dinner parties at RMT?

A Yes, I did.

Q In what way?

A I attended. I believe I made presentation.

Q You gave the dinner presentations that are reflected in the script in Government's Exhibit 1200?

A I am sure that I gave presentations.

Q When you were not giving a presentation for RMT, who was?

A It was an endeavor to train all of the people there. Ira Nathan, who had been the manager of the office, stayed on. He was also the broker for that office and he stayed on and was very capable at making the presentation.

Ultimately all other people in the office were trained to give some portion and ultimately the entire presentation.

Q So all the sales people at times gave the presentation, is that correct?

A To say all would be incorrect. The effort was made to make it possible for all of them to do that. I don't know that physically all of them would have made it, but there would have been a good majority of those people that would be able to make the presentation.

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Q At a given dinner party did one person make the different speeches throughout that dinner party or did more than one person make some of the speeches at the dinner party?

A Both situations would take place, where one might do it all the way and in other instances during the training of these people, there might be two speakers.

Q Do you recall how many distinct separate speeches there were at the dinner party?

In other words, how many speeches there were that may have been broken up by the film or by the dinner?

THE COURT: He has listed two in the description of the dinner party.

MR. KAUFMAN: I am going back, your Honor, and asking him to elaborate on it.

Q Were there two distinct speeches that were given or were there more, Mr. Zaknich?

A There was one presentation. It was broken down into different units, prior to dinner and after dinner.

Q Was that presentation also broken up by the films both before and after dinner?

A There were two interruptions for films also.

Q Do you recall the names of the films that were used at the dinner party?

A I believe one was "Golden Future," "Your Golden Future."

I don't recall the name of the film that -- it was brief -- it was a film that was put out by the Chamber of Commerce. I don't know what that film was called.

Q Have you previously seen the films that were shown at the dinner parties at the U.S. Attorney's office?

A At the U.S. Attorney's office?

Q Yes.

A Yes.

Q At the time you saw those films, were you able to identify them?

A Yes, I was.

Q Were those basically the films that were used at dinner parties?

A The films that were shown were the films that were used at dinner parties.

Q Were you able to detect in the films that you saw any difference from the films that you remember seeing at the dinner party?

A No, sir, I did not.

Q I show you what has been marked Government Exhibit 70 for identification and ask if you can identify this reel as the film that you were shown in the U.S.

Attorney's office.

A That's my signature on that.

Q Your initials?

A Yes.

Q Does looking at this covering reel refresh your recollection as to what the name of the other film was?

A The West Side Story.

MR. KAUFMAN: Your Honor, I don't believe we have offered 70 before. We offer it now.

MR. ARKIN: May I see the can?

May we have a date for this particular exhibit, Mr. Kaufman?

MR. KAUFMAN: Your Honor, this exhibit exists now --

THE COURT: Wait a second. I gather 70 has two films on it.

MR. KAUFMAN: Yes, your Honor, it is one reel of film with two distinct films on it.

THE COURT: All right.

Yes, Mr. Arkin, now go ahead.

MR. ARKIN: The film can, if your Honor please, does not have on it any particular date. As I look inside the can the film itself doesn't have any date on it so I would like to have a representation from Mr. Kaufman as to the date of the creation of this item.

MR. KAUFMAN: Your Honor, this film exists now as it existed when it was produced by the company and we have not added or subtracted anything from it.

THE COURT: The witness says he viewed it and it is the same as he saw in St. Louis.

MR. ARKIN: Well, if your Honor please, there were different films over different years.

THE COURT: But he says he saw that particular one. It is the same as he saw it in St. Louis. That's his testimony.

MR. ARKIN: May I ask him one question?

THE COURT: Surely.

VOIR DIRE EXAMINATION

BY MR. ARKIN:

Q In St. Louis, did you -- were you in charge of seeing to it that these films were shown to the people who attended the dinner parties?

THE COURT: Whether he was in charge of it or not, Mr. Arkin, makes no difference. He attended these dinner parties. He presided over some of them. He saw the films. He saw this one. He says this one is the same as he saw in St. Louis.

MR. ARKIN: Your Honor --

THE COURT: That's what he said.

MR. ARKIN: This is one reel and not two reels.

THE COURT: He said he saw the film. I don't care whether it is one or two reels.

MR. ARKIN: Very well, your Honor.

THE COURT: You are offering both reels?

MR. KAUFMAN: Your Honor, there is one reel which contains the two separate films, The West Side Story and Your Golden Future.

THE COURT: Did you see both of these films in the U.S. Attorney's office?

THE WITNESS: Yes, sir, I did.

THE COURT: Are they the same as you saw in St. Louis and were exhibited at dinners where you presided or watched or attended?

THE WITNESS: Yes, sir, they are.

THE COURT: All right, it comes in.

XXX (Government Exhibit 70 received in evidence.)

THE WITNESS: Your Honor --

THE COURT: Yes, go ahead.

THE WITNESS: I saw it in St. Louis. Specifically St. Louis or where these films that I have seen?

THE COURT: Now wait a second. Mr. Zaknich, you testified a few minutes ago that you viewed these films in the United States Attorney's office.

THE WITNESS: I saw the Golden Future.

THE COURT: And West Side Story?

THE WITNESS: Yes, sir.

THE COURT: You put your initials on it?

THE WITNESS: Yes, sir, I did see those.

THE COURT: You testified that what you saw in the United States Attorney's office was what you saw in St. Louis when you were the manager and presided over some of these presentations and attended some. That's what you said. Is that true?

THE WITNESS: I saw the West Side Story, your Honor, and I saw the Golden Future while I was in St. Louis, yes.

THE COURT: And you saw them here?

THE WITNESS: I saw that film at the U.S. Attorney's office.

THE COURT: Was what you saw at the U.S. Attorney's office the same film that you viewed when you attended dinner parties at St. Louis when you were the manager?

THE WITNESS: Yes, sir.

BY MR. KAUFMAN:

Q Was this also the same film that you saw at dinner parties in other locations as well?

THE COURT: Let's stay in St. Louis. Don't lose me. You have got me in St. Louis.

MR. KAUFMAN: All right, we will stay in St. Louis a while, your Honor.

Q Mr. Zaknich, was promotional material used at the dinner parties?

A Yes, sir, it was.

MR. GLENDON: Your Honor, may we approach the side bar on this?

THE COURT: Yes.

(At the side bar.)

MR. GLENDON: Your Honor, I think there's a substantial question as to whether this film could possibly be the film that this witness saw. The government when they showed us this film --

THE COURT: Three times now from that stand he swears it is. I am not goingto go any further. You can make a record.

MR. GLENDON: May I finish? When we saw this film, your Honor, before it was represented to us that the film, the original film was not in existence and the changes -- there have been a variety of changes in the film over the period of years and it defies belief that a witness could sit here and say that it may sound like it --

THE COURT: You can cross examine him, but now three times he has said yes.

MR. FLEMING: I think Mr. Glendon's point, as he explains it to me, is that the government knows this is not the original thing.

MR. GLENDON: They told us.

THE COURT: What do you mean not the original film?

MR. KAUFMAN: Your Honor, this is the film that the company produced in the grand jury pursuant to subpoena for the films that they had that they showed at the dinner parties.

I believe Ms. Hynes infomrs me that on the film there is indicated a 1969 copyright, which I guess would indicate the film was used at least in 1969 and presumably no earlier.

Mr. Zaknich is testifying that these were films that -- that he saw films in 1967 and '68, Your Golden Future and West Side Story did exist in '67 and '68 and Mr. Zaknich was shown these films and without him being told whether this film was copywritten, he looked at it and said, that's the film as I remember it.

THE COURT: You can bring it out on cross examination. I am not going to change his testimony.

(In open court.)

BY MR. KAUFMAN:

Q Mr. Zaknich --

THE COURT: Wait, we will have a short recess.

(Recess.)

T4C.PM (In the robing room.)

THE COURT: Yes, Mr. Lavinsky.

MR. LAVINSKY: Your Honor, I think it is important that we get the ground rules straight on the advice as to new documents coming into the possession of the government which they intend to offer into evidence.

As I understand it, we did not learn about this document until after lunch today. Now, concededly they had it before then. We were working on exhibits last night to try to finish that up. We certainly could have been advised at that time if not sooner and it seems to me we have to know because ultimately we ought to follow a single standard on advice as to documents.

THE COURT: I think you ought to turn them over, Ms. Hynes, as soon as you get them.

MR. KAUFMAN: Your Honor, that would have been done with this particular document except for one problem and that was the document had to remain in Mr. Zaknich's possession overnight because I had to have him review it ahead of time so he could say he identified it rather than wasting everybody's time by his reading it on the stand.

THE COURT: When did he give it to you?

MR. KAUFMAN: I believe yesterday. Tuesday at the earliest, I am not positive.

THE COURT: There's an awful lot of difference if you got it Tuesday, they should have been told about it Wednesday.

MR. KAUFMAN: Your Honor, I am not sure whether I got it. As you may understand, things are just a little hectic. He may have told me about it. I myself didn't review it until yesterday and didn't make a determination that it would be used as an exhibit at which time it was necessary to get Mr. Zaknich to study it.

THE COURT: Even if you haven't made a determination to use an exhibit, if you get things of this type which you are goingto review to see if it is an exhibit, you should turn it over. This is obviously an important document that you are going to rely on with this jury.

As to the manual by which he operated the branch in St. Louis.

MR. LAVINSKY: Your Honor, also certainly even if Mr. Kaufman had not yet had a chance to completely review it, he could have had it Xeroxed or advised us and we could have had it done so we could have been looking at it while they are looking at it.

THE COURT: It's obvious they will not finish with this witness so you will have it overnight.

MR. FLEMING: Or two nights.

MR. HOFFINGER: Your Honor, I know the exhibit was permitted into evidence and we didn't ask for a side bar or anything, but would it be possible, I think that there is no objection to that portion of the exhibit which is the manual, as he had it then, but there are other things that he said were added.

THE COURT: All of which he said he got from the home office in the first six months.

MR. HOFFINGER: All of which he got from the home office.

THE COURT: That's what he said.

MR. HOFFINGER: Because I see a newspaper article.

THE COURT: I am sorry, that's what his testimony is. He said he got it from the home office within the first six months, everything in that book.

MR. HOFFINGER: Because I was wondering about certain hearsay in it that we hadn't seen.

THE COURT: Mr. Fleming was asking him the questions and he said, I got it from the home office.

MR. FLEMING: I don't think he said in the first six months.

MR. KAUFMAN: Yes, I believe he did.

MS. CROSS: Your Honor, there is something in the book that's dated September of 1968. I believe the first six months --

THE COURT: This is his testimony. You go cross examine him and show he doesn't know what he's talking about. That doesn't rule it out.

MS. HYNES: Your Honor, I have an application. I bring it up somewhat gingerly but I feel I really must bring it up. At the time that the examination was going on of Mr. Mandel by Mr. Devorkin, there was a side bar in connection with Mr. Devorkin's presentation to Mr. Mandel of the grand jury testimony.

Mr. Fleming raised an objection and said to your Honor that he thought that Mr. Devorkin was misleading the witness. There was a rather heated discussion and your Honor said very loudly that you thought that

Mr. Devorkin was misleading the witness and then you looked at the grand jury testimony and it turned out that Mr. Devorkin was not.

However, the problem is --

THE COURT: No, no, my observation on misleading the jury wasn't in relation to the grand jury testimony. It was to Mr. Devorkin's question 15 minutes before that caused all the confusion. That's what I said. I made that perfectly clear on the record.

MS. HYNES: My concern is your Honor's comment about Mr. Devorkin misleading the jury in front of the jury.

THE COURT: I said it in front of the jury before the side bar. Nothing new in that. I told it right in front of the jury and the jury was nodding.

I was lost. The jury was lost and he was getting an impression over that he didn't mean.

My comment had absolutely nothing to do with the grand jury minutes.

MR. GLENDON: Another subject. Your Honor, with reference to this film, I hope I made myself clear, but I would like to make sure because this is very important and it may even be a question of interest to you between the various defense counsel.

I think we are entitled to a representation that this film here is not the film that was changed in 1972. It will make quite a difference in my judgment.

THE COURT: It is not the film that was changed.

MR. GLENDON: The film was revised substantially at the end of 1971 from the earlier film. Even though with copyrights on them they still can be cut and clipped and so forth. I don't know whether the government knows or is in a position but I think they should tell us.

THE COURT: There's no need for that right now because this fellow was out of the company by then.

All he has testified is that this film represents what he saw in 1967.

MR. GLENDON: Yes.

MR. HOFFINGER: In St. Louis.

MR. GLENDON: The changes are such, unless you sat down with a script and so forth, it makes it quite different and I really question whether he can make the statement that he does. It may be a matter of cross examination.

I think the government, however, which is proffering this exhibit, they know the film was changed. They have seen the different scripts. They have an obligation to tell us which film they think they are putting in here.

Secondly, as a part of my application, I would like to have an opportunity to see the film tonight.

THE COURT: That's granted. The first one I don't see its pertinence yet.

All this film has been offered for, for this witness, is it represents what he saw in St. Louis.

MR. GLENDON: If the government knows or has reason to believe that the particular film that they are putting in now could not possibly have been the film that he saw in 1967 --

THE COURT: If it fairly represents, you take the pictures that you used as the proper tie that was bought. I don't know that that's the exact land that Mrs. Henry bought. She can look at a picture and she says that represents what I bought. That's all this man is saying about this.

Now, if you want to show, it can't possibly be the same, you can show it on cross examination, but he says, I viewed this film and that's what it represents.

Now, it may be that the changes are minor so that he wouldn't consider it a different film. If it was major, then you show it.

MR. GLENDON: I think the government knows the problem. What I am asking for is a representation by them of what they think they are putting in.

THE COURT: They are putting in the '69 film. How long it ran and whether it comes up if they want to use it later, then you can say, wait a second, you can't do that, there was a change in the film. All it is in for now, Mr. Glendon, is this witness says it represents what I saw in St. Louis in 1967. That's all he is saying. That's all it is in for. That it existed in 1967.

You want to cross examine him and say how could you possibly do it, it was 1969, it may be the changes were miniscule so that still it fairly represents what he heard. That's the same with the pictures that Mr. Fleming offered the other day.

MR. GLENDON: Your Honor, if there's only one film, it's going to be difficult if not impossible for us to show the differences and the changes.

THE COURT: Well, if the government ever takes the position that this is the film that was used all the way through and they know it is not the film used all the way through, then they are in trouble. That's their problem. They know what they are faced with.

They are faced with the jury being told that they were misled by the government.

Okay, let's go out and get some testimony.

MS. HYNES: Your Honor, the application that I would like to make and I don't think the jury has been so instructed and I understand what your Honor's problem was, that anything that the court says or that the lawyers say is not evidence and should not be considered evidence and I didn't think the jury has received that instruction to date and there has been a lot of colloquy among counsel during the course of this and I would ask for that instruction.

THE COURT: No, I don't see a need for it yet. A couple of snide remarks, but you can't stop that.

(In open court; jury present.)

THE COURT: Go ahead.

MR. KAUFMAN: Thank you, your Honor.

(Continued on next page.)

BY MR. KAUFMAN:

Q Mr. Zaknich, was promotional material used at the dinners?

A Yes, it was.

Q What types of promotional material?

A There were brochures and reprints.

Q Please keep your voice up.

A There were brochures and reprints.

Q Reprints of what?

A Newspaper articles, Albuquerque -- generally from Albuquerque.

Q Were any maps used?

A There were plat maps used, yes.

Q Where did the promotional material come from that was used at the dinner parties?

A From New York.

Q When you say New York, what do you mean?

A From headquarters, New York office.

Q AMREP headquarters?

A 16 West 61st.

Q Was that true for the films as well?

A That would be where we would order the material from.

Q As the person in charge of RMT Realty, did you report to AMREP headquarters concerning the dinner parties?

A I did.

Q What type of reports did you make?

A Written reports and there would also be phone calls.

Q What type of information would be reflected on the written reports?

A The number of people who responded to the RSVP's, the number who, in fact, did attend, the number of people that came as a result of a boost, the number of sales that were made, the amount of money that changed hands.

Q To whom did you send those reports?

A The report regarding the sales, the RSVP's and so forth, again I am not sure of the individual, but it was either to the marketing office or to Dan Friedman.

Q Did you receive any feedback from AMREP headquarters on those reports?

A Periodically we would get reports on what took place in any given month.

Q Statistics?

A They were called statistical reports.

Q Who sent you those reports?

A They were sent to me originally by, I believe it was, Mr. Carity.

Q Let me show you Government Exhibit 358 already in evidence and ask if you can identify this.

A I can identify it.

Q What is it?

A It's a statistical report with comments sent to me and the manager of RMT Realty Corporation for the month of March of 1968.

Q This came from Chester Carity and Duke Mandel, is that right?

A Mr. Carity has signed it and it has three copies.

Q Copies to Howard Mandel, Dan Friedman and Howard Friedman, is that correct?

A That's correct.

THE COURT: Are you offering it?

MR. KAUFMAN: It is already in evidence, your Honor.

THE COURT: What number is that?

MR. KAUFMAN: 358.

THE COURT: Go ahead.

BY MR. KAUFMAN:

Q Mr. Zaknich, I believe you said you remained as manager of RMT until sometime in 1968, is that right?

A I said I remained in St. Louis supervising that office until the early part of '68, that is correct.

Q Did your position with AMREP change at that time?

A I had other assignments. I don't know that my title, whatever it was --

THE COURT: Did you leave St. Louis?

THE WITNESS: Yes.

THE COURT: When?

THE WITNESS: I didn't leave it permanently, your Honor. I still maintained supervision in the St. Louis office and I went on out to Omaha, Nebraska, to operate another office.

Q Did there come a time when you became a regional manager?

A Pardon me?

Q Did there come a time when you became a regional manager?

A Yes, there was.

Q About when was that?

A Sometime in '68 and I don'tknow specifically when that title was given.

Q What were your responsibilities as regional manager?

A Supervision of branch managers in each of those offices that I had to work with.

Q In connection with --

THE COURT: Hold it. What were the offices you had to work with?

THE WITNESS: RMT Realty.

THE COURT: St. Louis.

THE WITNESS: The Omaha, Nebraska office, Memphis, Tennessee. Those were the open offices, your Honor.

THE COURT: Yes.

Q Did you open new offices as the regional manager?

A Yes, I did.

Q Where were those offices?

A Those cities that I just mentioned.

Q I am sorry. Were those offices in existence when you became regional manager or did you open them as new offices?

A No, sir, they were not in existence.

THE COURT: Just St. Louis was open?

THE WITNESS: That's correct.

THE COURT: Okay.

Q When you became regional manager, what other offices were already in existence, if any?

THE COURT: In his territory.

MR. KAUFMAN: Correct.

A I serviced other offices along with those two new ones that I mentioned.

Q What were those other offices?

A I also serviced the Philly office. I visited the Pittsburg office. I am not sure, but I think I also went to the Maryland office.

Q Was there an office in Ohio?

A Yes, there were offices in Ohio.

Q Was that part of your territory?

A Again not at that specific time when I took over -- when I was given the responsibility of being a regional manager. Those progressively came.

Q How long were you regional manager?

A About a year.

Q During the time that you were regional manager, how many other offices did you open or supervise?

A I also physically helped to open the Las Vegas offices, Reno, Nevada. I offered some assistance in opening St. Louis, Houston, Dallas.

Q Salt Lake City?

A Salt Lake City.

Q During the time did you also begin to supervise the Ohio office?

A I don't believe I did as the regional director at that time supervise Ohio.

Q Was there another regional manager during the time period that you were a regional manager?

THE COURT: Where? In the same place?

MR. KAUFMAN: No.

Q Covering different territory.

A With the company?

Q Yes.

A Yes, there was another regional manager with the company.

Q Who was that?

A Sid Hollander.

Q Do you recall what offices he supervised?

A I am having trouble telling you the ones I was supervising.

Q Let me suggest some names and see if it refreshes your recollection.

Seattle.

A As I recall it he had Seattle.

Q Denver?

A And he had Denver.

Q Buffalo, New York?

A Yes, he did.

Q Syracuse, New York

A Yes.

Q Chicago?

A Yes.

Q Did you attend dinner parties conducted by the various branch offices that you supervised?

A Yes, I did.

Q How did those dinners compare with the dinners that you had seen in St. Louis and the dinner that you had seen in New York in terms of format and content?

A Fundamentally the same.

Q The same film?

A The same film was used, yes.

Q West Side Story --

A Not the same film, the same material that was in the film, yes.

THE COURT: He is asking you about the film itself.

Q Was West Side Story used at all those offices?

A There are two films that are similar. I don't know the title of the film that we are talking about now, West Side Story or there are two distincts after the dinner films.

Q Are you talking about two separate short films?

A Short films. Your Golden Future fundamentally was one film. There were two distinct films that preceded Your Golden Future.

They were similar yet I don't think their titles were the same.

Q Was one of those short films a film that had Howard K. Smith in it?

A There was a Howard K. Smith, yes. Jack Campbell was on that. I don't know what that is called.

Q Was the other short film the one that is entitled the West Side Story?

A I don't know the title. There is a distinct difference in those two filsm.

THE COURT: You say you saw Exhibit 70, right?

THE WITNESS: Yes, sir.

THE COURT: YOu said one was West Side Story and one was Your Golden Future or that reel contained two films. One known as West Side Story and one Your Golden Future, right?

THE WITNESS: Yes, sir.

THE COURT: You say there was a third film?

THE WITNESS: Yes, there was a third film, yes, a short one.

THE COURT: You don't remember the name of that?

Q Were there dinner parties at which all three --

THE COURT: Wait a second, he didn't give me an answer.

MR. KAUFMAN: I thought he did say there were three films, your Honor.

THE COURT: I asked him and you don't know the title.

MR. KAUFMAN: I am sorry.

THE WITNESS: I don't know the title, your Honor.

THE COURT: That was another short film, right?

THE WITNESS: It was a short film.

THE COURT: Similar to West Side Story in the sense of length of time?

THE WITNESS: Similar in that it came on prior to Your Golden Future.

THE COURT: All right.

THE WITNESS: And it was a film that pretty much concentrated on the Albuquerque scene and Rio Rancho. Just a very brief film.

THE COURT: Now can we summarize it by saying that you had one of two films before the dinner?

THE WITNESS: Correct.

THE COURT: Called either West Side Story or one you don't remember and that after the dinner there was another film and it was always Your Golden Future?

THE WITNESS: Correct.

THE COURT: Okay.

BY MR. KAUFMAN:

Q Is that a true statement at the dinner parties that you attended in all the different offices that you serviced?

A Yes, sir.

Q With respect to the promotional material, was the same promotional material used at all the different offices that you serviced?

A Yes.

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Q Do you remember the name of any of the brochures?

A Off the top of my head one that I remember is This is My Land.

Q I show you what has been marked as Government Exhibit 384 in evidence and ask if you can identify that.

A I can.

Q Can you tell us what that is?

A This is a piece that deals with the Rio Rancho product.

Q Is this the brochure you just referred to?

A Yes.

Q I direct your attention to the title page where it says "This is My Land". I believe you said "This is Your Land".

A "This is My Land".

Q Is this the brochure you were referring to?

A Yes.

Q As regional manager, was one of your duties to visit the various offices and conduct sales meetings among the sales personnel?

A That is one of the things that I did.

Q What was the purpose of those sales meetings?

A Motivational.

Q Motivation in what way?

A To motivate the people to get the team spirit, to get conceptually to hear if they had any problems. To air out problems and to update them on some of the things that were happening in Rio Rancho.

Q Was that usually done in response to declining sales statistics from that particular office?

A That might be a reason for going there, the decline of sales, yes.

Q Was that also part of the duties of Sidney Hollander being the other regional manager, if you know?

A I would determine that he would have the same responsibility based on title.

Q I believe you said you remained as regional manager for approximately a year, is that right?

A Around a year, yes.

Q Did you receive a promotion after that?

A I did.

Q What job did you get then?

A Either national sales manager or national director of sales.

Q What did that position entail?

A It entailed supervising regional manager.

THE COURT: Can we have a date?

Q Do you recall about when you became the national sales manager?

A Sometime in '69.

Q Where was your office when you became national sales manager or where did you work out of?

A When I was national sales manager?

Q Yes.

A At the top of a file cabinet.

Q Where?

A In Mr. Mandel's area.

Q Was that at AMREP Headquarters?

A Yes.

Q 16 West 61st Street?

A Yes.

Q I gather from what you are saying that you shared an office?

A I shared an office --

Q With Mr. Mandel?

A Mr. Mandel had his own office and he also had a secretarial staff in there and I shared a desk.

Q What was Mr. Mandel's title at that time?

A At what time?

Q At the time that you became national sales manager.

A Vice-president sales.

Q Did you continue to travel to the AMREP -- the different AMREP sales offices around the country?

A Yes, I did.

Q Did you continue to attend sales dinners?

A Yes, I did.

Q How did these sales dinners compare with all the sales dinners you had previously seen?

A Conceptually the same.

Q Did you eventually become vice-president in charge of sales?

A I did.

Q About when was that?

A Sometime in '70. I believe it was late in '70. I am not confident of dates. It was sometime in 1970.

Q Who gave you that promotion?

A I was told about it by Mr. Carity.

THE COURT: This is vice-president of sales of AMREP, isn't it?

THE WITNESS: Yes.

Q By the way, were you always paid by AMREP Corporation?

THE COURT: You mean since the initial --

Q Since 1967. Were your checks always AMREP

Corporation checks?

A There was -- I don't recall the name of the company that appeared on those checks.

Q Did you ever hear of Sales Research Divison?

A Sales Research.

Q Is that the name of the company that was on your checks?

A Yes.

Q Was Sales Research Divison a wholly-owned subsidiary of AMREP?

A I know that the checks cashed. I don't know what the ownership was.

Q What was the business of Sales Research Division if you know?

A I don't have any knowledge of it.

Q You did all your work for AMREP Corporation and it is an affiliated owned and operated broker?

A That's correct.

Q When you became vice-president in charge of sales, who was your immediate supervisor?

A Chester Carity.

Q What was his position?

A Executive vice-president.

Q Can you describe for us the nature of the dealings that you had with Chester Carity?

MR. FLEMING: I object.

THE COURT: What do you mean the nature of the dealings?

Q Mr. Carity was your direct superior, is that right?

A Yes, he was.

Q Did you report to him on various matters that were within your responsibility as national sales manager and vice-president of sales?

A Yes, I did.

Q What types of matters did you report to him about and what type of matters did you discuss with him?

MR. FLEMING: May we have a date?

Q In relation to sales.

MR. FLEMING: Date, place and subject matter of the conversation, your Honor.

A Dates, places and times? You have got to be kidding.

I couldn't possibly tell you dates and times.

Q During the time period that you were vice-president for sales, how long a period of time did that cover?

A I guess from six to nine months, somewhere in that area.

THE COURT: Wait a second, did you leave then in 1971?

THE WITNESS: Yes, I did.

THE COURT: All right.

Q During the time period --

THE COURT: During that time period.

Q -- did you report and have conversations with Mr. Carity on a regular basis concerning the areas of your responsibility?

A We discussed many things about Rio Rancho, about Silver Spring Shores --

THE COURT: We are talking about Rio Rancho.

Q In connection with Rio Rancho and in connection with your responsibility for sales, what types of reports and what type of discussions did you have with Chester Carity?

A We would discuss officer's performance, the success or lack of success in Rio Rancho itself, the OPC Program.

Q What program?

A The OPC Program.

Q Let's just take them one by one. When you say an office's success, what do you mean by that?

A In the same manner that we looked at a statistical report to review what was happening in a given office or in a given regional manager's area, we might discuss it as an individual office or as a total area that the individual was working in.

Q In other words, you reviewed sales statistics with Chester Carity?

A He was one of the people I reviewed that with, yes.

Q Who else did you review that with?

A I would also have discussions with Dan Friedman on that topic.

Q Anybody else?

A This is a vice-president?

Q Yes.

A As I remember, principally my discussions were with those two people in regard to offices and sales performance.

Q You said that you discussed with Chester Carity something called the OPC Program, is that right?

A That's correct.

Q What was the OPC Program?

A It was a program that was instituted in Florida and in New Mexico where people were solicited on the street and given invitations to attend a complimentary dinner or a complimentary meal and listen to the Rio Rancho sales program or in the case of Florida to listen to the Silver Springs Shore program.

Q Again focusing on Rio Rancho, where was the OPC Program conducted?

A Are you talking about the sales or the solicitation?

Q The solicitation.

A Solicitations would be in Albuquerque. It might be a shopping center. It could be the Old Indian Village, I don't recall the name of it, but there was a village there.

Q Were those solicitations directed toward Albuquerque residents or towards tourists?

A I don't know that we specifically checked where they were from. We really tried to get them to attend these complimentary dinners. Principally I would feel that the tourist people would respond more favorably --

THE COURT: That is not the question. The question was to whom it was directed. Obviously if you are just giving out invitations on the street, the person giving them out doesn't know whether they are tourists or not.

Q I believe you mentioned an area called Old Town, is that right?

A Yes, Old Town.

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Q What is Old Town?

A It's a place where out of towners go to buy the Indian commodities.

Q Is that one of the tourist attractions in Albuquerque?

A It it one of them.

Q Where were the OPC presentations held?

A At the Panorama Inn at Rio Rancho.

Q Is that the motel that AMREP owns at Rio Rancho?

A Yes, it is.

Q Did you ever attend any of those OPC presentations?

A I believe I attended between three, five, a half-ful of them.

Q How did they compare in format and content to the regular dinner party?

A Fundamentally the program was the same.

Q Who was Howard Friedman?

A Who is Howard Friedman?

A Yes, what was his capacity in the company?

A At what time?

Q When you were vice president for sales.

A At the time I was vice president Mr. Friedman, Howard Friedman, was president.

Q When you first started --

THE COURT: President of AMREP?

THE WITNESS: Yes.

THE COURT: Go ahead.

Q When you first started in 1967 was he something other than the president of AMREP?

A Yes, he was.

Q What was he?

A I believe he was the treasurer, but I'm not sure. He was not president.

Q Who was president of AMREP, if you recall?

A When I joined the company?

Q Yes.

A Irving Blum.

Q Do you see Irving Blum in court today?

A I do.

Q Can you point him out?

A He is the gentleman sitting in the last row of people on this side closest to the middle. Not the gentleman that's gray headed, the gentleman in the blue.

Q In the well of the courtroom or outside of the well of the courtroom, the spectators section or outside?

A In the spectators section.

Q In the first row of seats?

A Yes.

MR. HOFFINGER: We will acknowledge that's Mr. Blum.

Q You say Mr. Howard Friedman was president of AMREP when you were vice president of sales, is that right?

A That's correct.

Q Do you see Howard Friedman in court today?

MR. ARKIN: We will acknowledge Mr. Friedman is Mr. Friedman, your Honor. There's no problem.

THE COURT: All right.

Q Did you have any dealings with Howard Friedman while you were vice president of sales?

A What type of dealings?

Q Did you have any discussions with Howard Friedman concerning sales, closing rates or any of the various programs or tests that you were conducting?

A There was a point in time I had discussions with anyone that would listen when we had a shortage of real estate to sell and we were short of allocations and I discussed shortages with Mr. Howard Friedman.

Q Do you recall approximately when that conversation was?

A It would have been during the 1970-71 period when the discussion about the lack of --

Q To the best of your recollection tell us what was said at that conversation.

A We discussed the -- I discussed with him the need for additional property for the sales offices to have to sell.

Q Why was that?

A We didn't have enough real estate to give allocations to all of the offices.

Q What did Howard Friedman say to that?

A He indicated that negotiations were under way for additional acquisition of real estate.

Q Did you have discussions with any other corporate officers on that topic?

A I think in a passing way I would have mentioned something like that to Hank Hoffman and certainly to Dan Friedman and to Chester Carity, I would have made more than just a casual remark about it. We would have just discussed that we were having problems getting offices allocations.

Q What was Hank Hoffman's position in the company at that time?

A I don't really recall his title. Ultimately I heard once thathe was senior vice president, but I don't know what his title was during that span of time.

Q Do you see Mr. Hoffman in court today?

MR. ARKIN: We will concede Mr. Hoffman is Mr. Hoffman, the gentleman sitting back over here, your Honor.

Q To the best of your knowledge, what was Mr. Hoffman's responsibilities at AMREP?

A I have no idea.

Q Do you know if he was involved in adversiting or promotional material?

MR. ARKIN: Objection, your Honor. He said he had no idea.

THE COURT: I will let him ask another question. He is not limited to one answer.

Q Do you remember the question?

A Do I know -- will you ask me again?

Q Do you know whether Mr. Hoffman was involved in the productionof advertising or promotional material?

A I believe he offered assistance in that area.

Q Do you know what form that assistance took?

A I know that he was very creative, but I don't know specifically what Mr. Hoffman's creativity or what his ultimate product was.

I do know that he was very successful with Jacques Brel is Alive and Well and Living in Paris.

Q That's an outside interest of Mr. Hoffman?

A I don't know that it is an outside interest.

Q Did it have anything to do with AMREP?

A No, it had nothing to do with AMREP to my knowledge. I am not -- I don't know that it had anything to do with AMREP.

Q Did you have any discussions with Mr. Hoffman concerning Your Golden Future or West Side Story or the third film?

A I think in a casual way we might have talked about the film, but I don't know of anything that specifically stands out in my mind about it.

Q Mr. Zaknich, I show you a document that has been marked Government Exhibit 557 for identification. I ask you to look at the second and third pages and ask if you can identify the handwriting.

THE COURT: This is 557?

MR. KAUFMAN: Yes, your Honor.

Q Do you recognize the handwriting?

A It resembles writing that I had seen before of -- there's a similarity between that and Dan Friedman, but I am not sure that it is. It is similar to it.

Q While you were at AMREP was it normal procedure to receive interoffice memos to and from other corporate officers?

A I would received them from other officers.

Q Would you receive such memos if either the memo were directed toward you, written to you or whether you were listed as a c.c., carbon copy?

A If I were carbon copied, I believe that I would have gotten it.

Q The Pete Z. that appears on 557, would that refer to [illegible]

A Yes, it would.

MR. [illegible]: The Government offers 557, your Honor.

(Pause.)

VOIR DIRE EXAMINATION

BY MR. ARKIN:

Q You said you were unable to identify the handwriting on this?

A Mr. Arkin, I indicated there was a similarity but I wasn't sure that it was Mr. Friedman's, Dan Friedman.

MR. ARKIN: I see.

If that be the case -- excuse me, your Honor.

Q Let me ask you, Mr. Zaknich, did you ever receive a copy yourself during the time of your employment of the document annexed to the first page of Exhibit 557?

A I would really like to look at it again. Some of the things that I spotted in glancing over that were topics of discussion, but I am not sure --

Q But you have no recollection of having received those pieces of paper?

A I am not -- I don't recall having really received that piece of paper, no.

Q You can't testify to that here today then?

A No.

MR. ARKIN: If your Honor please, he is unable to identify the handwriting --

THE COURT: Let me see it.

MR. KAUFMAN: Your Honor, number one, that's not the testimony. The second time Mr. Arkin has said it.

Number two, this is another one of those documents that are on the list.

THE COURT: I don't see how the attachments can come in from reading the top. However, last night I was informed there was no objection to this.

MR. ARKIN: Your Honor, to the first page, not to the attachments and to the first page without the scribbling.

THE COURT: I think the first comes in. I can't let the second in.

MR. ARKIN: Yes, your Honor, I understand. May the scribbling be redacted?

THE COURT: What scribbling?

MR. ARKIN: On the first page, your Honor.

THE COURT: That's not scribbling, he just changed numbers.

MR. ARKIN: It is a question of who changed the numbers.

THE COURT: The numbers were changed on it, that's all.

MR. ARKIN: All right, your Honor.

THE COURT: Instead of 18.4 per cent it says 20.89 per cent.

MR. ARKIN: Yes, your Honor.

THE COURT: That stays in. The attachments come off.

MR. ARKIN: Thank you, your Honor.

XXX (Government Exhibit 557 received in evidence.)

(Continued on next page.)

MR. KAUFMAN: I will just read a portion of this to the jury.

(At this point, portions of Government Exhibit 557 in evidence was read to the jury.)

THE COURT: This is a good time to adjourn until tomorrow morning.

10:30 tomorrow morning.

(Jury left the courtroom.)

THE COURT: May I see counsel at the bench, please.

(Bench conference not reported.)

(Trial adjourned to November 12, 1976, at 10:30 a.m.)

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WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Howard Mandel (Resumed)	835	909	956	
Peter Zaknich	972			

EXHIBIT INDEX

Court	Identification	In Evidence
1		838

Government	Identification	In Evidence
462,463,467		882
1034,1035		906
1200-A		993
1200-B		994
70		1006
557		1048

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UNITED STATES OF AMERICA

v.

76 Cr. 644

AMREP CORPORATION, et al.

November 12, 1976
10:30 a.m.

oOo

(In open court - jury present.)

XX

PETER ZAKNICH, resumed.

THE COURT: You may proceed.

MR. KAUFMAN: Thank you, your Honor.

XX

DIRECT EXAMINATION (Continued)

BY MR. KAUFMAN:

Q Mr. Zaknich, I want to go back over one thing that we discussed yesterday. Do you recall identifying Government Exhibit 70, that reel of film that contained The West Side Story and Your Golden Future?

A I do.

Q I believe you testified yesterday that The West Side Story was one of two short films used at the dinner presentations, do you recall that?

A I do.

Q I believe you also testified The West Side

Story was one of those two short films that you saw when you were first in St. Louis, do you recall testifying to that?

A I do.

Q Please keep your voice up again. Try to remember that.

With respect to whether or not you saw the film The West Side Story when you were first in St. Louis, do you want to change that testimony?

A Well, the film that I am talking about is the Howard K. Smith and Jack Campbell on the film.

Q That is not The West Side Story?

A I don't know what that film is called.

Q With respect to the film The West Side Story, the one that you have previously identified, when do you recall first seeing that film at the dinner presentation?

A I don't recall specifically when but I recall seeing that film.

Q Did there come a time when you saw that film at many dinner parties?

A Yes, I do.

THE COURT: You keep saying that, I gather this is Smith-Campbell?

MR. KAUFMAN: No, The West Side Story.

Q Do you remember seeing The West Side Story film at the many dinner parties sometime after you first started with AMREP?

A When I originally started I saw the Howard K. Smith-Jack Campbell film. Principally the one I recall is Howard K. Smith. Then subsequently West Side Story became a part of the pre-dinner presentation.

Q And that West Side Story film was one of the films that you saw at the various dinner parties that you had attended around the country, is that correct?

A Yes, it was.

(Continued on next page.)

Q Directing your attention to the film "Your Golden Future", the longer film I believe that you testified you saw from 1967 until 1971, did that film always remain identical during the four years that you were with AMREP, was it always the same exact film?

A It was not identical, no.

Q What type of changes were made in the film?

A There was an upgrading of the film. There were certain testimonials taken out and others inserted.

Q In terms of updating facts --

THE COURT: Wait.

You say updating. What do you mean by updating?

THE WITNESS: Bringing them more current with that particular era.

Q Did the basic overall film though remain the same in terms of what was seen on the screen and what the narration was?

A The theme of the film remained the same.

MR. GLENDON: Objection. He is asking for an opinion without having laid any foundation --

THE COURT: He has seen both of them and he can tell us.

Objection overruled.

Q Did the film remain essentially the same in terms of what was seen on the screen and what the basic narration was?

A Fundamentally it remained the same.

Q Mr. Zaknich, was Sol Friend or did Sol Friend work for AMREP Corporation when you first began in 1967?

A Not as I recall he didn't.

Q Do you recall about when Sol Friend began working for AMREP?

A At some point during my term of employment, perhaps the last year and a half or so, two years. I am not too distinct on time.

Q Do you see Sol Friend here in Court today?

A I do.

Q Can you point him out?

MR. GLENDON: Mr. Friend is right here.

Q When Sol Friend first came to AMREP what was his capacity in the company?

A When he came into the AMREP Building I believe he was brought in as counsel for AMREP Corporation and I also think he was also conducting his personal business at that time but I don't know that to be a fact.

Q Did his --

THE COURT: If it is not a fact, strike it.

Q Did his situation with the company change after a while?

A He subsequently became a vice-president of the corporation.

Q Was he vice-president of AMREP at the time you left AMREP?

A At the time I left he was a vice-president.

Q What were Mr. Friend's responsibilities with AMREP ?

THE COURT: Mr. Friend's responsibilities?

MR. KAUFMAN: Yes.

THE COURT: How would he know? He said he was general counsel and vice-president.

Did you deal with him, was he your superior?

THE WITNESS: No.

THE COURT: Objection sustained.

end t1b

Q Do you know if Mr. Friend made trips to Rio Rancho?

A I saw Mr. Friend at Rio Rancho.

Q Approximately how many times, if you can recall?

A I don't really know how many times. Possibly once or twice.

Q Are you aware that he made other trips to Rio Rancho?

MR. GLENDON: Object.

THE COURT: Sustained.

Q Mr. Zaknich, were the sales dinners in the various offices around the country monitored in any way by AMREP Headquarters?

A Yes, they were.

Q How were these sales presentations monitored?

A By personnel actually -- supervisory personnel actually being on the scene and also recordings made of presentations from time to time.

Q Tape recordings?

A Yes, tape recordings.

Q Were these dinner presentations regularly conducted business activity of AMREP Corporation?

A The dinner parties were a part of the regular business, yes.

Q Was it the normal practice of AMREP and the branch offices to tape these dinner parties periodically during the time you worked for AMREP?

A They were taped from time to time, yes, they were.

Q After the tapes were made in the branch offices, what happened to those tapes?

A Some of them were forwarded to New York City.

Q Did you receive any of those tapes?

A I did.

Q Did anybody else receive those tapes?

A I think prior to my receiving them, Mr. Mandel received them.

Q During the course of your employment with AMREP, did you listen to any of those tapes?

A I did.

Q How did those presentations that you heard on the tape compare with the dinner parties that you had personally attended?

A With the exception of the speaker, they were basically the same.

Q Who else besides yourself to your knowledge listened to those tapes?

A Are you speaking of any of the tapes that came to New York?

Q Yes.

A I can account for only an occasion that I personally had Dan and Mr. Carity -- Dan Friedman and Chester Carity listen to one of the tapes.

I don't know from what office but we were listening to a presentation but only on one occasion.

Q While you worked for AMREP, did you maintain possession of those tapes?

A As vice-president I acquired those tapes. I had others that I had been receiving from time to time also.

Q Were those tapes both cassettes and reel-to-reel tapes?

THE COURT: And what?

MR. KAUFMAN: Reel-to-reel.

THE COURT: Reel-to-reel, I don't know what that means?

MR. KAUFMAN: A reel-to-reel tape --

THE COURT: Does the witness know what a reel-to-reel tape is?

THE WITNESS: Yes, I do.

THE COURT: What is it?

A A reel-to-reel tape is the recording tape is on one reel going on to another reel that winds up as it is being played the same way that a projector does when you are showing film, the same application, only in this instance you are getting speech.

Q Is this a reel-to-reel tape, Mr. Zaknich? (Indicating).

A Yes, that is a reel-to-reel tape.

Q Is this a cassette tape?

A Yes, it is.

Q When those tapes were received at the AMREP office, were they contained in anything?

A In cartons or packaged in some way that would prevent them from being destroyed in the mail.

Q Was there any indication on those containers stating where the tape had been made and at what time?

A In a variety of ways. It might be on the reel itself. It might be on the cassette or it might have an accompanying speed memo indicating what date, what party and who the speakers and so forth were.

Q When you left AMREP in 1971 did you keep some of those tapes?

A Yes, I did.

Q Have you previously turned those tapes over to the government?

A I have.

Q Mr. Zaknich, I show you what will be marked as Government Exhibit 668-A and 669-A, which is one cassette recording.

670-A and 671-A, which is a second cassette recording.

672-A, which is one reel-to-reel tape.

673-A and 674-A, which is a reel-to-reel tape.

I ask you if you can identify those particular tapes?

A This is the carton I sent to the U.S. Attorney's office and I presume the tape is inside.

This is also one.

This is also, yes.

Q These are the tapes you provided the government?

A Yes, they are.

Q Besides reflecting dinner presentations, do any of those tapes reflect anything else?

A One of them, I believe, was a training session.

Q Do you know who conducted that training session by listening to the tape?

A Sid Hollander.

Q When you say a training session, is that what you have previously described yesterday as what you and Sid Hollander did as regional managers?

A That would have been one of the things that we would have done.

Q As I recollect, you testified that was going to different sales offices and motivating the sales people, is that right?

A Motivational, diagnostic and a variety of other things.

MR. KAUFMAN: Your Honor, the government offers these four tapes.

THE COURT: 666-A, 669-A, 670-A, 671-A, 672-A, 673-A and 674-A?

MR. KAUFMAN: Yes, your Honor.

MR. FLEMING: May I have a question, your Honor.

VOIR DIRE EXAMINATION

XX BY MR. FLEMING:

Q My name is Fleming. Mr. Zaknich.

A Zaknich, that is fine.

Q I represent Dan Friedman and Chester Carity.

MR. FLEMING: Where is the number?

MR. KAUFMAN: The tag wasn't on it, but I wrote it in.

Let's have the clerk identify them.

MR. KAUFMAN: This is 668-A and 669-A.

Your Honor, I may explain that those tapes that have two numbers assigned to them contain more than one presentation. That is why they have more than one number.

(Government Exhibits 668-A and 669-A marked for identification)

MR. KAUFMAN: 670 and 671-A.

THE COURT: 668-A and 669-A are?

MR. KAUFMAN: Two tapes containing two presentations, your Honor.

(Government Exhibit 670-A and 671-A marked for identification)

MR. FLEMING: I do object to what is on the cover of 668 and it is probably on the cover of the others or maybe on the cover of the others.

MR. KAUFMAN: We will remove those, your Honor.

THE COURT: They will be removed.

MR. FLEMING: Thank you.

(Government Exhibit 672-A marked for identification)

MR. KAUFMAN: 673 and 674.

THE COURT: 671-A was admitted, wasn't it, on November 10th, two days ago?

MR. KAUFMAN: Yes, your Honor, that was a copy of the tape. I believe we ought to change the first 671-A to 671-B.

THE COURT: My notes show 671-A and B came in on Wednesday.

MR. KAUFMAN: Your Honor, that was a tape which was a copy of this one that Mr. Mandel had listened to.

THE COURT: Call these C and D if you are going to put them in separately.

MR. KAUFMAN: Okay. Your Honor, we will change the exhibit being offered now from 671-A to 671-C and D.

xxx (Government Exhibits 671-C and D marked for identification)

THE COURT: What about 672-A?

MR. KAUFMAN: That is one presentation on one reel.

xx (Government Exhibits 673-A and 674-A marked for identification)

MR. KAUFMAN: Those are two presentations on one reel, your Honor.

THE COURT: 73-A and 74-A?

MR. KAUFMAN: Right.

THE COURT: Two presentations on one reel?

MR. KAUFMAN: Correct, your Honor.

THE COURT: Go ahead.

BY MR. FLEMING:

Q Mr. Zaknich, I show you 668-A and 669-A.

Do you know when that was received in New York?

A No, sir, I do not.

Q Do you know from what office it was received?

A Not as a number --

THE COURT: You mean you would have to play it?

THE WITNESS: Yes.

THE COURT: He said he would have to play it.

Q Are your answers --

A That would be the same for all of the tapes.

MR. FLEMING: Object to them.

THE COURT: Overruled. We will play them if you want to find out.

He says the box is meaningless. It is the tape and from playing the tape he can answer your question.

MR. FLEMING: Let me ask again:

Q If you heard the tape could you testify as to when it was received in New York?

A No, I couldn't.

THE COURT: Could you testify as to where it was played and when it was played or recorded?

THE WITNESS: Only as they indicate on the tapes themselves, your Honor.

THE COURT: Do you have a transcript of them?

MR. KAUFMAN: Yes, your Honor.

THE COURT: Show them to Mr. Fleming.

MR. KAUFMAN: Your Honor, if I may have a few questions.

THE COURT: Wait a minute. Mr. Fleming had a simple question.

Do you know when they were received in New York; do you know where they were recorded; do you know when they were recorded?

The witness says that looking at them he cannot tell.

I asked you if you had transcripts and you said yes. Wouldn't the transcripts show?

MR. KAUFMAN: Yes, your Honor, but there is also something on the tape that I want to direct Mr. Zaknich's attention to.

THE COURT: What are you talking about?

Let's do them one at a time chronologically.

BY MR. KAUFMAN:

Q 668-A and 669-A, one tape with two presentations.

THE COURT: One tape with two presentations?

MR. KAUFMAN: Yes, your Honor.

Q Looking at the actual cassette, is there anything that would indicate to you when and where that tape was made?

A On the cassette itself it states, sales meeting, October 1, 1968, Denver, Colorado.

Q And the reverse side?

A A&C Realty, Denver, Colorado, 30 September 68, Bill Gibbs speaker, Ron Smith close.

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THE COURT: Stop. You have two of these now, Mr. Fleming.

BY MR. FLEMING:

Q Did you make those entries that you just read?

A Did I make them? No, I did not.

Q Do you recognize the handwriting?

A No, sir, I do not.

THE COURT: How did you receive them?

THE WITNESS: Those tapes were among a number of tapes that I had from time to time in New York.

THE COURT: How did you receive them?

THE WITNESS: When they were turned over by Mandel.

THE COURT: Mandel turned those over to you?

THE WITNESS: I believe he did, your Honor.

BY MR. FLEMING:

Q Do you recall him doing it, those tapes?

A A number of tapes, a number of things when he left that office.

Q Do you recall Mr. Mandel turning over those?

A Specifically handing me those, no, sir, I do not.

THE COURT: Why don't you pursue a chain of custody, Mr. Kaufman?

BY MR. KAUFMAN:

Q Mr. Zaknich, when you became vice president of sales, you replaced Mr. Mandel, is that right?

A Yes, I guess you could say that. Mr. Mandel remained with the company as vice president of marketing.

Q But he had been vice president of sales before you, is that correct?

A That's correct.

Q When you replaced him, did he turn over a number of tapes that he had?

A There were a number of projects, a number of tapes. He turned over a variety of things as they applied to sales to me.

Q Before you became vice president of sales, were you aware that tapes of dinner presentations were sent to AMREP headquarters?

A I was.

Q After you became vice president of sales, were tapes of sales presentations received by yourself?

A Yes, they were.

THE COURT: Mr. Kaufman, we are dealing with 668-A and 669-A. Let's take care of those.

Q Mr. Zaknich, the tapes that we have in court here today, to the best of your recollection, were these among the tapes that Mr. Mandel turned over to you when you became vice president for sales?

A I believe they are.

Q Are these tapes that remained in your custody from then on until you turned them over to the government?

A That's correct.

Q Having listened to all these tapes, do these tapes accurately reflect dinner presentations and sales meetings?

A They do.

MR. KAUFMAN: Your Honor, I believe that establishes it.

THE COURT: Mr. Zaknich, you say Mr. Mandel gave you a number of tapes, is that right?

THE WITNESS: Yes, sir.

THE COURT: What did you do with the tapes he gave you?

THE WITNESS: Those were placed in my office, which was on another level, one level below his.

THE COURT: Where in the office did you place them?

THEWITNESS: On a sill, on a file cabinet.

THE COURT: Did you take the tapes with you when you left from that sill near the file cabinet?

THE WITNESS: I took tapes on many occasions to listen to one a weekend, your Honor.

THE COURT: What did you do with them after you listened to them?

THE WITNESS: Some of them were returned to the branch manager. Others were erased and the cassettes were used.

THE COURT: What about these that you produced? How did they stay with you?

THE WITNESS: I don't know, your Honor. I had those tapes at home. I don't know specifically when I got those home, whether they were at my home prior to leaving AMREP or at the time of leaving AMREP.

THE COURT: You say Mr. Mandel gave those to you?

THE WITNESS: I believe he did.

THE COURT: Out of all of the tapes you had at home, did you take from the office of AMREP?

THE WITNESS: All of the tapes?

THE COURT: You produced these and we are trying to find out where you got them from. You said you had them at home?

THE WITNESS: Yes, I did.

THE COURT: How did they get to your home?

THE WITNESS: I took them from the office.

THE COURT: Were they from the group that Mandel gave you?

THE WITNESS: Yes, your Honor, they would have to be, otherwise I would have no way of having them.

THE COURT: Objection overruled.

XXX (Government Exhibits 668-A and 669-A received in evidence.)

THE COURT: Do you want him to identify the rest? Don't you, Mr. Fleming?

MR. FLEMING: The questions I asked, your Honor, he said he would have to say the same thing with regard to all the rest.

THE COURT: I thought you wanted dates. These are the only two he has been able to answer for you, Mr. Fleming.

MR. FLEMING: I agree, your Honor.

THE COURT: Do you want him to find out about the rest?

MR. FLEMING: I asked him and he said he couldn't identify the rest by date any better than he could identify 669-A --

THE COURT: 668-A and 669-A, there was no identification on the containing box, but there was identificatic on the tapes. Do you want him to take the other tapes out of the boxes and see if there's identification on them?

MR. FLEMING: Yes, sir.

THE COURT: Go ahead.

MR. FLEMING: I didn't want to know whether you wanted me to do it or Mr. Kaufman to do it.

I was confused because Mr. Kaufman had taken it over.

THE COURT: Okay, it is now your turn.

BY MR. FLEMING:

Q With regard to those other exhibit numbers --

THE COURT: Let's take them chronologically.

Q Here is 670-A for identification and 671, they are taped together or are they?

MR. KAUFMAN: Here is the actual cassette.

Q They are marked together.

I have a cassette which I am told was taken out of the box marked 670-A. Do you have any independent recollection of when you received that in New York?

A I have no recollection of when this was received in New York.

Q So the only thing you know about when you received it in New York or where it was tapes is whatever is written on that cassette, is that right?

A Yes, sir.

Q [illegible] on that cassette?

A Yes, there is.

THE COURT: [illegible] 670-A.

[illegible] go.

I can't make out the rest, [illegible] '68.

[illegible] 670-A and I gather [illegible] same as you would [illegible] correct?

[illegible] go [illegible]

BY MR. FLEMING:

Q What number is this?

MR. KAUFMAN: 671-C and D.

MR. FLEMING: Okay.

A It says BTG Realty, on tape Hollander, October 9, 1968.

THE COURT: Where did that come from?

THE WITNESS: The same place, your Honor.

THE COURT: Out loud, tell them.

THE WITNESS: The same place.

THE COURT: Chicago?

MR. KAUFMAN: Where is BTG Realty?

THE WITNESS: I think that's Buffalo.

THE COURT: Buffalo and the date?

THE WITNESS: Was October 9, '68.

THE COURT: All right.

C and D is what, one cassette?

MR. KAUFMAN: C and D is the second side of one cassette, your Honor.

670-A is the first side of the same cassette.

THE COURT: All right. 672-A.

MR. FLEMING: There is a seal on it, Judge.

THE COURT: You had better unseal it.

BY MR. FLEMING:

Q Mr. Zaknich, 672-A, here is the box and here is the tape, yes, it is marked 672-A, is there anything on there that assists you in identifying --

THE COURT: I gather that's called a reel.

MR. FLEMING: That's a reel.

A It shows my initials on here, 10/20/76, C, I had 158, 6 by --

MR. FLEMING: That's all irrelevent, if your Honor please.

THE COURT: Strike it.

Q Does it say anything about where it was made and when, that's the tape which is on that reel?

A Not on the reel it doesn't.

Q Is there anything on the box of the reel that assists you in recalling where or when that tape was made?

A The box?

Q The box or the reel.

A It says on the box, front talk, speed 17/8, Tony Caparale --

THE COURT: Wait, does it show where that reel was made?

THE WITNESS: Just Tony Caparale, November 14, '67, presentation made actual party. It doesn't say anything about where.

THE COURT: That's the name of a person? Caparale?

THE WITNESS: Yes, it is.

THE COURT: Do you know where he worked?

THE WITNESS: No, I do not.

THE COURT: Mr. Kaufman, I will keep that out for the time being.

BY MR. FLEMING:

Q 673-A and 674-A again is sealed. I will break this seal, if I may, your Honor, if I can.

MR. ARKIN: I have a scissors.

Q There's a notation on the back of this box S&W Realty Corp., 4003 Aurora, North Seattle, Washington. Does that mean anything to you?

A Just that it was an AMREP office.

Q Does it mean anything to you with regard to the contents of this box? It also has 1968.

A I don't understand your question.

THE COURT: Let's have a recess.

(Recess.)

(Continued on next page.)

(Robing room conference.)

THE COURT: I again have to ask about this witness. He is thick of tongue. He is slow of response. He does not know what anybody is talking about. For a man who ran millions of dollars worth of sales I am going to bring him in and ask him if he is sick.

MS. HYNES: I didn't understand Mr. Fleming's last question. ~~It~~ wasn't the same as before.

THE COURT: I did. This man doesn't know anything.

MS. HYNES: He is trying to be careful. He is being responsive.

THE COURT: He is being asked simple questions, Ms. Hynes. Bring the witness in here. I want to see if he is under sedation. His whole attitude, his manner is terrible. He is a man who I assume was an intelligent man, good enough to be vice president of sales of a $200 million corporation.

MR. KAUFMAN: This witness went through three or four days of testimony in the FTC on the same case. He was concerned with his experience there and he is now amazingly concerned that every answer that he gives be totally responsive to the question. He was the same way when I was talking to him in the office. He wants to make sure he understands the question.

THE COURT: He knows what we are looking for. Boy, you have asked him, Fleming asked him, I have asked him and nonsense comes out in some of the answers.

MR. KAUFMAN: This is a man who except for the FTC experience never testified before.

THE COURT: I want to find out if he is under sedation. I had the problem yesterday. You all told me, including Ms. Hynes, you, Mr. Kaufman, they thought he was on tranquilizers.

MS. HYNES: I didn't say that.

MR. ARKIN: I suggested he might have appeared that way. I have no knowledge of that at all.

THE COURT: Let's find out.

Mr. Zaknich, do you feel all right?

THE WITNESS: Yes, I do.

THE COURT: Are you under any medication?

THE WITNESS: No.

THE COURT: Have you taken any?

THE WITNESS: No.

THE COURT: None at all?

THE WITNESS: No.

THE COURT: Do you have trouble understanding the questions being put to you either by Mr. Kaufman or

Mr. Fleming or me?

THE WITNESS: I had trouble determining the question that Mr. Fleming asked. He said where was it made. I have no idea where it was made.

THE COURT: Why don't you just say that? You read off Seattle on the cover.

THE WITNESS: That would have been the office that put that tape out but I don't know where that tape was made.

MR. KAUFMAN: He doesn't know what restaurant it was made at in Seattle.

MR. FLEMING: Perhaps the town in the State of Washington, if they traveled around, that would be true too. That's my fault. I understand the confusion.

THE COURT: I am not talking just about the last question.

Thank you, Mr. Zaknich.

MR. FLEMING: Now, your Honor, I renew my objection because if all his testimony is now that this came out of a particular branch office that is not --

THE COURT: Without the name of the restaurant you mean?

MR. FLEMING: It's not connected with any dinner.

MR. ARKIN: All he says is he got them from Howard Mande.

THE COURT: I will let them in. Objection overruled.

MR. FLEMING: I understand his confusion.

THE COURT: All right.

(In open court - jury present.)

THE COURT: All right.

Are you finished with 673-A and 674-A, Mr. Kaufman?

MR. KAUFMAN: One last question, your Honor.

DIRECT EXAMINATION (Continued)

BY MR. KAUFMAN:

Q Referring to 673-A and 674-A, Mr. Zaknich, does the writing on the box indicate to you what sales office made that tape?

A It does.

Q What sales office is that?

A S&W Realty Corporation.

Q Which is where?

A Seattle.

THE COURT: What's the date?

MR. KAUFMAN: IT just has 1968 on it, your Honor.

THE COURT: All right.

MR. KAUFMAN: The government offers 673-A and 674-A.

MR. FLEMING: No objection.

XXX (Government Exhibits 668-A, 669-A, 670-A, 671-C and D, 673-A and 674-A received in evidence.)

MR. KAUFMAN: At this time, the government offers to play tapes marked 671-A and 671-B previously identified by Mr. Mandel and Mr. Zaknich.

THE COURT: You may.

(Continued on next page.)

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MR. KAUFMAN: May we hand out transcripts of the tapes?

THE COURT: Have you seen the transcripts of the tapes?

MR. FLEMING: May we come to the side bar?

THE COURT: Yes.

(At the side bar)

THE COURT: Yes.

MR. FLEMING: I am just confirming what is obvious. Your Honor has ruled on our objection with regard to connecting these tapes to a specific purchaser.

THE COURT: Yes.

MR. FLEMING: We still have a connection objection, I assume.

THE COURT: I am letting them place them and we will worry about the other objections later on. This is part of what these people do in pursuance to the indictments for the scheme.

MR. FLEMING: Whatever appropriate remedies we may have later on we, of course, have preserved?

THE COURT: Yes.

MR. GLENDON: My objection on time is still subsisting.

THE COURT: You have a continuing one.

MR. HOFFINGER: I take it it is clear when any one of us are objecting on general grounds we each don't have to stand up.

THE COURT: It is on the record when one objects all join in.

MR. FLEMING: They keep telling me in the Court of Appeals I haven't made my record. May we incorporate our memorandum submitted this morning as the basis for our objection to playing tapes at this time?

THE COURT: Certainly.

MR. FLEMING: I think we stated in the memorandum, but I would state it again in the record, that in our view it is within your Honor's discretion quite clearly to withhold the playing of this evidence until it is properly connected and we believe that in a case which apparently is going to run as long as this one is going to run there is the danger of substantial immediate prejudice.

THE COURT: If they do not connect it there is a dismissal here, isn't there?

MR. FLEMING: There sure is. But my point is --

MR. ARKIN: We join in that.

MR. FLEMING: My point is suppose they

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connect it to one count, you see, and then you have a lot of evidence --

THE COURT: We will worry about that.

MR. FLEMING: I think it would be substantially prejudicial.

MS. HYNES: Is your Honor saying that --

THE COURT: You can play it.

MS. HYNES: I understand that.

THE COURT: But all objections they have are reserved.

MS. HYNES: I want to know whether your Honor is ruling that the government is under an obligation to produce a purchaser who actually heard --

THE COURT: I am telling you you can play it. I am not telling you how to try your case.

(In open court)

THE COURT: Which exhibits are these?

MR. DEVORKIN: 671-A and B.

THE COURT: They are in already. Go ahead.

MR. DEVORKIN: Does your Honor want one?

THE COURT: Obviously.

MR. FLEMING: What are we playing?

THE COURT: 671-C and D I gather.

MR. KAUFMAN: A and B, your Honor, the copy of C and D which Mr. Mandel identified. Each of the original tapes has been copied on to a separate tape, your Honor, and counsel for both sides have agreed that the copies can be played because the originals are old tapes and subject to breakage.

THE COURT: All Mr. Fleming asked you is what are you playing?

MR. KAUFMAN: 671-A and B.

MR. FLEMING: Would it be appropriate to identify unless the tape itself does where we are, at what time when we hear these tapes? Or purportedly anyway.

THE COURT: This is a sales presentation at Buffalo, New York. I don't know the date.

MR. KAUFMAN: BTG Realty in Buffalo, October 9, 1968.

I am just going to start it to make sure that it is working.

THE COURT: Don't you want the jurors to listen?

MR. KAUFMAN: I want to cue it in at the beginning and when it is cued in we will instruct the jurors to put their headsets on.

THE COURT: Go ahead.

end 13b (Pause)

MR. KAUFMAN: I believe we are ready, your Honor.

THE COURT: Instruct the jury on their use.

MR. KAUFMAN: Take the headsets off for a second, please. Just put them directly on over the ears. In case one ear seems to be too loud or too light, you have individual controls on this black knob that can adjust the sound into each ear.

If at any time you lose sound through your headset, if you could just raise your hand and let us know so we can make the appropriate adjustment.

If it is too loud into your ears and you cannot control it with this, let us know and we will control the volume.

(Tape played)

(Pause.)

Q Mr. Zaknich, what was the purpose of having these tapes of dinner presentations sent to corporate headquarters in New York?

A To evaluate what was being said, to determine the type of motivation that existed, the mannerisms of the speaker.

Q During the time you were with AMREP were you aware of any instructions from AMREP to branch offices telling the branch offices that certain things in the speaker's presentations could not be said?

A Not that I am aware of.

Q At the end of the tape we just heard people were calling out holds on property. Was that standard at all dinners?

A Yes, it was.

Q Can you explain to us what physicall went on in the room when those holds were called out?

A The purpose of holds was to --

Q I didn't ask you the purpose. Tell us what happened. Who was calling the holds, what went on?

A The salesmen at the table would get up and take a given parcel of land off of the market so that it wasn't available to any of his other colleagues while he discussed it with his particular prospect.

Q When we heard on the tape the sales person call out hold number 5, what did number 5 refer to?

A On that particular sheet that evening number 5 was a specific parcel of land.

Q What was the purpose of calling out these holds?

A To give the sales person an opportunity of discussing that parcel and not have one of his colleagues discussing the same parcel and possibly selling it out from under him. They had motivational -- it was motivational both from the selling person and also from the person that the property was being discussed with.

Q When you say motivational, what do you mean?

A It created an atmosphere, a climate of happening, that here was an opportunity of getting into a good profit making opportunity.

Q At dinner presentations after holds were called out and after sales people tried to close a sale with the customer, did the speaker, the podium speaker, announce anything?

A If there were sales made he would announce to the people in the dinner reception,the selling people as well as those other clients that were in attendance, that a given parcel was now sold and no longer available.

Q How would the speaker know that a given parcel had been sold?

A By the sales person selling that piece getting up and announcing it to him.

Q Were those announcements of sales always accurate?

A For the most part they were.

Q Were there occasions when they were not accurate?

A There may have been.

Q Mr. Zaknich, do you know whether there were occasions when those announcements were not accurate?

MR. FLEMING: I object.

THE COURT: He is now going back to the question you are making the objection.

MR. FLEMING: I would like to strike the other answers.

THE COURT: Overruled.

A What's the question?

(Question read back.)

A There may have been occasions where --

MR. FLEMING: Objection.

THE COURT: The question is were there occasions when you know that a salesman getting up and announcing the sale was not telling the truth?

THE WITNESS: Not that I specifically know, no.

Q Did you have a conversation at the Lincoln Motor Inn involving Sid Hollander and Dan Friedman at which you were a participant?

THE COURT: When?

Q At any time during your employment at AMREP.

A Early in my employment with the company.

Q Do you recall --

MR. FLEMING: Fix a time.

THE COURT: When?

Q Do you recall approximately what year?

A Probably 1968.

Q Do you recall the topic -- withdrawn.

At that discussion do you recall the topic being raised of salesmen and speakers announcing inaccurate sales at dinner parties?

A There was an occasion where Hollander indicated --

Q What did Hollander say?

A That the marketing consultant announced a deletion when actually a sale had not been made.

Q What was the purpose -- when you say announced a deletion, did that deletion reflect a sale?

A A deletion reflecting a sale.

Q When, in fact, a sale had not been made, is that correct?

A Correct.

Q What was the purpose of doing that?

MR. ARKIN: Objection.

MR. FLEMING: Objection.

THE COURT: Sustained.

(Continued on next page.)

Q Did Mr. Hollander say anything with respect to the purpose of doing that?

THE COURT: As I gather it you are talking about one example of hundreds and hundreds of these, is that what you are doing? That is the impression I get.

Q Mr. Zaknich, did Mr. Hollander say this happened one isolated time or that this was a general practice at the dinner parties?

A He was relating to a specific situation we were discussing. I don't know the office or the details regarding that but he was indicating that as it related to where he apparently had been and discussing a party and what had taken place. He was relating that a "sold" actually had not been a sale.

THE COURT: That is one, Mr. Kaufman.

MR. KAUFMAN: I understand that is what the witness is saying now, your Honor.

MR. FLEMING: I object to that and I move for a mistrial.

MR. ARKIN: I move for a mistrial.

THE COURT: Overruled. You don't think he said anything else in the previous answers, do you, in front of this jury?

MR. KAUFMAN: No, your Honor.

THE COURT: Motion for mistrial is denied.

Q Mr. Zaknich, were you aware that that practice continued after you had that meeting --

MR. FLEMING: Objection.

MR. ARKIN: Objection.

THE COURT: Sustained.

Q Do you know of your own knowledge either from your presence at a dinner party or from what other employees at AMREP told you whether or not that particular incident of calling out an inaccurate sale continued?

MR. ARKIN: I object to the word "continued".

THE COURT: I don't understand.

Q Ever recurred.

THE COURT: When he ever heard of another instance where it could have happened?

MR. KAUFMAN: Yes, your Honor.

THE COURT: I will let him answer that.

A I had conversations regarding that.

Q Conversations with who?

A With managers, regional managers and myself.

THE COURT: Do you understand the question he is putting to you?

THE WITNESS: He is asking me had I heard that the practice --

THE COURT: Not practice. You have so far testified that at some meeting in a motel Hollander complained that at someplace where he was conducting a sale or a dinner presentation there was one salesman who improperly called out a sale which had not taken place, right, that is what you said?

THE WITNESS: Yes.

THE COURT: Obviously one out of a series of hundreds is not a practice so please don't use the word practice and that is what I wanted to get Mr. Kaufman to straighten out.

You heard of one. Did you hear of any other specific statements similar to the one that Mr. Hollander made?

THE WITNESS: No specific statements, no.

Q Are you saying now that to the best of your knowledge that was the only --

MR. ARKIN: Objection.

THE COURT: Overruled.

Q -- occurrence of that sort, that one time Mr. Hollander told you about that?

A I am saying that is the only one that I can be specific about.

Q Do you recall what Dan Friedman's reaction was when Sid Hollander informed those at the table of that particular incident?

MR. ARKIN: Can we have what was said?

THE COURT: Let's have the whole conversation if you want to do that.

Q To the best of your recollection, tell us what Mr. Hollander said.

A This was an entire evening where we were together and eating and we were discussing many things.

THE COURT: All you are being asked about is the conversation by Mr. Hollander regarding one salesman who inaccurately reported a sale, to wit, a sale which had not taken place.

THE WITNESS: The only thing that we discussed on that was that -- he discussed on that, that it did take place and that it was a motivational thing and that the people or the selling people actually felt that a sale had been made.

THE COURT: What did you say in reply to Mr. Hollander's statement?

THE WITNESS: What did I say?

THE COURT: Yes, if anything.

THE WITNESS: Nothing.

THE COURT: Who else was present, Mr. Kaufman?

Q Was Mr. Dan Friedman present?

A Yes.

THE COURT: Did he say anything in relation to that statement by Mr. Hollander?

THE WITNESS: Not in relation to that statement.

THE COURT: All right.

Q Mr. Zaknich, when Mr. Hollander reported on that incident was it in the nature of a complaint by Mr. Hollander or was it in the nature of a report that something had occurred?

MR. ARKIN: Objection.

THE COURT: Sustained.

MR. KAUFMAN: When you questioned Mr. Zaknich you characterized it as Mr. Zaknich complaining about it.

THE COURT: I will withdraw the word complaint. He made a statement that he knew of one incident hwere a salesman did this.

Q I believe you just testified that Mr. Hollander reported on this as a motivational factor at the dinner, is that correct?

A Part of it --

MR. FLEMING: I thought we had had the conversation. I object to this repetitive argument.

THE COURT: Did he say anything else aside from what you have told us?

THE WITNESS: No, sir.

Q Was anything said at that conversation with respect to whether or not that could never happen again?

A No.

THE COURT: We will adjourn for lunch. Return at 2:15 please.

(Jury left the courtroom)

(Luncheon recess)

AFTERNOON SESSION

2:15 P.M.

(In the robing room)

THE COURT: Why?

MR. HOFFINGER: Mr. Blum indicated to me that he wanted to see his doctor on Monday. He indicated-- I think your Honor knows, he has an arteriosclerosis heart condition and he has indicated he is having some kind of chest pains. He wants to see the doctor on Monday. He would like to be excused on Monday. I will be here obviously.

THE COURT: You understand that you will be missing some of the testimony?

DEFENDANT BLUM: Yes, but my attorney will be here, your Honor.

THE COURT: All right, as long as you know what you are doing.

When will you return, in the afternoon?

DEFENDANT BLUM: I don't know. He won't give me an appointment until about 1:00 o'clock. I don't know how long I will be there.

THE COURT: All right, this excuse will cover the day.

MR. HOFFINGER: Would it be possible for him to leave a little early today, maybe 3:30 or 4:00 o'clock?

THE COURT: Yes.

MR. HOFFINGER: Thank you, your Honor.

THE COURT: Yes.

MR. KAUFMAN: Your Honor, we have a problem with scheduling of witnesses.

I don't know whether or not Mr. Zaknich will take the rest of the day or not. That is dependent upon defendants' cross, but the witness who was supposed to follow Mr. Zaknich called us this morning and said he had 110 fever and couldn't come in.

We then rounded up another witness who came in and was ready to testify except, as we learned, he is an orthodox Jew and has to be home by 4:00 o'clock so he will have to leave at 3:00.

All I am saying is that if Mr. Zaknich is finished before 5:00 o'clock, we will not have another witness ready to put on. I just wanted to let everybody know that at this point.

THE COURT: All right. Let's go on and finish Mr. Zaknich.

(In open court - jury present)

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PETER ZAKNICH, resumed

THE COURT: You may proceed.

MR. KAUFMAN: Thank you, your Honor.

DIRECT EXAMINATION CONTINUED

BY MR. KAUFMAN:

Q Mr. Zaknich, were the prices of the lots at Rio Rancho raised periodically during the time that you worked at AMREP?

A They were.

Q Approximately how many times a year were they raised, were the prices raised?

A Generally from one to two times a year.

Q Was there any normal amount of price raise, was the price raise usually the same or did it differ?

A I don't know that the percentages stayed the same all the time, no.

Q Was there a range within which the prices were raised in terms of percentage?

A I would estimate somewhere around ten percent.

Q Do you know who at AMREP decided on price increases?

MR. FLEMING: May we fix a time, your Honor?

THE COURT: Yes.

This witness was there for about four years.

The defense is entitled to know the period you are talking about.

MR. KAUFMAN: I agree, your Honor.

Q Mr. Zaknich, during the time when you were vice-president for sales, do you know who was responsible or who made the decision on price increases?

A That would have been Chester Carity. The upper management staff.

THE COURT: I don't know who the upper management staff is, Mr. Kaufman. I don't think anybody in the courtroom knows.

Q When you say the upper management staff, who are you referring to?

A It would have been the presidents and the executive vice-president and senior vice-presidents, that level.

Q Who were they, what were their names?

A Howard Friedman, Chester Carity, Mr. Hoffman and --

Q Keep your voice up, please.

A Mr. Hoffman and perhaps Mr. Friedman, Dan Friedman.

Q Mr. Zaknich, part of the tapes we heard this morning included a reference to the growth of Albuquerque in terms of direction and I believe the tape contained the following language:

"Albuquerque is bursting at the seams. We are locked in."

MR. FLEMING: Page, please.

MR. KAUFMAN: Page 6.

Middle paragraph.

Q "Albuquerque is bursting at the seams. We're locked in, we're locked in by three sides. To the east of us is the Siandia Mountains and to the north and south is government reserve lands on which nobody can ever live and there is only one logical direction for this fantastic growth to continue and this happens to be to the north and northwest of Albuquerque and this is where your host, American Realty and Petroleum, has 55,000 acres, a little over 90 square miles, where we are creating and developing a brand, a brand new city."

Was that a standard part of all the presentations you heard at the many dinners that you attended?

A During the period of my employ, yes.

Q To your knowledge was anything done at AMREP to research or verify that particular representation?

A I have no idea.

Q Were you aware of a report commissioned by

AMREP Corporation in 1965 and submitted to it by a firm called Harmon, O'Donnell & Henninger?

MR. ARKIN: Objection, if your Honor please.

THE COURT: He just asked if he was aware of it.

MR. ARKIN: He said he had no idea what research was done.

THE COURT: He can ask a specific question regarding a specific document, your Honor.

MR. ARKIN: Very well, your Honor, I object.

THE COURT: Overruled.

Q Were you aware of that report while you were working at AMREP?

A No, I was not.

Q During the course of your employment at AMREP did you visit Albuquerque and Rio Rancho Estates?

A I did.

Q Approximately how many times during the four years you worked at AMREP?

A Perhaps twenty-five or fifty, somewhere in that range. Maybe even more.

Q When you first started to work with AMREP in 1967 how big was Rio Rancho, if you know?

A Approximately 50,000 acres.

Q At the time you left AMREP in 1971 how big was Rio Rancho Estates, if you know?

A Approximately 90 to 100,000 acres.

Q Do you know when that additional acreage was acquired?

A I believe it was sometime in '70, I am not sure, but I believe that is the time period.

Q Was this in response to the inventory shortage that you testified about yesterday?

MR. ARKIN: Objection, your Honor.

THE COURT: If he knows. He has testified yesterday to some conversations in which he was told that there were negotiations going on to buy additional property.

MR. ARKIN: The question calls for a conclusion. I don't think he's competent to make it, if your Honor please.

THE COURT: Overruled.

A May I hear that question, sir?

MR. KAUFMAN: Mr. Robert, could you read it?

(Read.)

A That was the feeling that I had, that it was in response to an inventory shortage.

MR. ARKIN: Move to strike the answer.

THE COURT: Sustained. Strike the answer.

Q Did you have anything other than the feeling with respect to that additional purchase?

MR. ARKIN: Objection, your Honor.

THE COURT: Overruled.

A I knew we needed more real estate to sell at Rio Rancho Estates.

THE COURT: No.

Q Did anybody --

THE COURT: Wait.

MR. ARKIN: Move to strike the answer.

THE COURT: Wait. Mr. Kaufman is trying to find out from you whether you were told by anyone that this land was bought for the purpose of filling in what you claim was a small land inventory available for sale, not your conclusion as to why it was bought:. Did anybody tell you why it was bought?

THE WITNESS: There were discussions that we were buying land in order to have additional real estate to sell.

THE COURT: Now, who was present at those discussions that you recall?

MR. FLEMING: May we fix a time period, your Honor?

THE COURT: Fine.

THE WITNESS: I had had a discussion with Howard Friedman on that. I don't know the specific time period, but we had sicsussed it.

Howard Mandel and I had discussed it, Danny and I had discussed it --

THE COURT: Who?

THE WITNESS: Dan Friedman. Chester, we had discussed it on many occasions that we needed additional inventory and the suggestion was we were going to get some.

THE COURT: All right.

BY MR. KAUFMAN:

Q When you were at AMREP, did you know how big the City of Albuquerque was in terms of acreage?

A No, sir, I did not.

Q When was the last time during your employment with AMREP that you were at Rio Rancho?

A Just prior to my leaving the company, sometime in January, February.

Q If what year?

A Of '71.

Q Are you familiar with what Rio Rancho looks like on a map?

A Yes.

Q Do you recognize this map at all, referring to Government's Exhibit 93 in evidence?

A It appears to be a plat map of Rio Rancho Estates.

Q When you say plat map, does this include units, blocks and lots or something less than that?

A Inits and blocks.

Q Can you point out to us what part of this consisted of the original property of Rio Rancho prior to the additional land acquisition?

THE COURT: Isn't that already in the record through Mr. Mandel?

MR. KAUFMAN: It may be, your Honor, but I have to establish a foundation for what Mr. Zaknich is going to testify to.

THE COURT: Go ahead.

A It included all the 16 original units.

Q Was it 16 or 17 units, do you recall?

A 17 units. The portion below this line (indicating).

Q In 1971, to your knowledge, had the additional units up to unit 26 been designated yet?

A Are you referring to had we had plat maps of them?

Q Yes.

A No, we did not.

Q The last time you were at Rio Rancho in early 1971, can you show us on this map what constituted the developed portion of the whole Rio Rancho Estates?

A There was development down in unit 16 and Corrales Heights.

Q When you say unit 16, you are referring to all of unit 16?

A A portion of unit 16.

Q This is all of unit 16 here (indicating)? Do you have any idea which portion?

A Generally this area in here.

Q You are referring to the northeast portion of unit 16?

A Yes.

Q Corrales Heights is where?

A Here.

Q Referring to the land east of state road number 528?

A Yes.

Q Was there any other development at that time?

A That was it principally.

Q Was the golf course in?

A The golf course was in.

Q That's referring to this area right under the words Panorama Heights?

A The club house was in.

Q Basically the developed portion was this land in the southeast corner of the property?

A Yes, sir.

Q While you were working at AMREP, were you familiar with the phrase "building area"?

A Yes, I was.

Q Can you tell us what the building area was?

A The building area was the area where utilities were available for immediate construction of homes.

Q Were there areas set aside as building areas in the different units of Rio Rancho?

A Each of the units were reserved a percentage for future immediate build areas for exchange purposes.

Q Were those areas called core areas, to your knowledge?

A Yes.

Q Did those core areas have utilities in them?

A Not at that juncture.

Q To your knowledge, do you know how much of the total land was reserved by core areas?

A In each unit at least 10 per cent.

Q 10 per cent of a unit was a core area?

A It was reserved for exchange, which principally meant reserving it for future building.

Q What happened if a customer would trade in a lot that he owned for a lot in the building area, what happened to the lot that the customer traded in?

A It would go back into inventory.

Q What happened to it once it was back in inventory?

A It would be resold.

Q Was this exchange provision contained in the contract that the customer signed?

A Yes, it was.

Q Directing your attention to your first few years at AMREP, how did the exchange privilege work in terms of what the customer traded in and what the customer got back?

MR. ARKIN: Your Honor, may we have which exchange privilege? We have established there were at least two exchange privileges. May the question be more precise?

THE COURT: Which one?

Q The exchange privilege when a person wanted to build a house. Do you understand what we are focusing on, Mr. Zaknich?

A Your question is what happened to an individual who wanted to acquire a building lot?

Q Yes.

A He was traded a building lot for a half acre of his holding.

Q At any additional cost?

A There was no additional cost.

Q Did there come a time when this exchange provision changed in any way?

A The exchange privilege fundamentally remained the same half acre for half acre with one exception and that was the exception in Corrales Heights.

Q When you refer to the exception of Corrales Heights, what do you mean?

A Well, that area that I pointed out earlier there were lots where smaller than half acres and it was an immediate build area, people who traded lots in there did not have half acre for half acre and in some instances may have had to pay additional money.

Q Do you know how much additional money they had to pay?

A I have no idea.

Q Did you have any conversations with any of the AMREP officers about the Corrales Heights situation?

A Yes, I did.

Q With who?

A As I recall, I think it was Chester.

Q About when was this conversation?

A Not too much before leaving the company.

Q Please tell us about that conversation, what you said and what he said to the best of your recollection.

A It had been brought to my attention through a sales person and ultimately in discussions at the property -

Q What had been brought to your attention?

A That the exchange privilege into the Corrales Heights area was inconsistent with the exchange privilege in unit 16 and that one of the customers was unable to exchange on an even basis. This was initially a sales person named Potter and ultimately a discussion with Chester on this topic and since it was such a great selling tool for the sales people it was brought to his attention and I don't know what subsequently happened.

THE COURT: You say it was brought to your attention that the exchange privilege into Corrales Heights was not the same as the exchange privilege into unit 16. How did they differe aside from size of the plot? We have already been told that if you wanted to exchange a half acre of lot, say, in unit 17 for a half acre in the building area you went into unit 16, which is the building area.

THE WITNESS: Correct.

THE COURT: You also were told that if you want to go into Corrales Heights you didn't get a half acre for the half acre you traded in, you only got a quarter acre for the half acre you traded in.

Was there any other difference besides that?

THE WITNESS: When I originally learned of it there was also the discussion that there was going to be an additional charge for that exchange.

THE COURT: This was brought to your attention by one of the sales persons out at Rio?

THE WITNESS: Right.

THE COURT: They thought what, this wasn't fair or it made it more difficult for them to sell?

THE WITNESS: They felt there was an inconsistency in the exchange privilege that was constantly being used as a selling tool.

THE COURT: You say you brought this to the attention of Mr. Carity?

THE WITNESS: Yes.

THE COURT: What did Mr. Carity say to you when you told him about it?

THE WITNESS: I don't know that there was any response. I think it was one of discussion and ultimately he and Hood and people at the property were going to look into it.

THE COURT: All right.

Q Were you aware of any change in the exchange policy after you had that conversation with Mr. Carity?

A Not that I can recall, but the period of time there that I remained with the company was not that long.

Q During the time that you were with AMREP did the contract signed by the customer include a six-month cancellation provision?

A A six-month cancellation privilege?

Q Yes, refund privilege.

A Yes, it did.

Q Can you describe that refund privilege?

A After the purchaser had made his purchase any time during the first six months upon visiting the Rio Rancho property registered tour, in the event that he or she did not like the property they had the opportunity of complete refund.

Q Could the property owner visit his or her own property himself and cancel or did somebody have to accompany the property owner?

A It had to be a registered tour.

Q Does that mean somebody had to accompany the property owner?

A Yes.

Q Who was it who accompanied the property owner?

A The personnel at the property.

Q What type of personnel?

A Sales personnel.

Q Did AMREP also conduct any tours for customers wanting to go to Albuquerque from the various cities where they lived?

A They encouraged this, yes.

Q They what?

A It was encouraged very definitely.

Q I didn't ask you that. Did they conduct any programs for the people who wanted to go?

A Yes.

Q What type of program?s

A Fly programs.

Q Charter flights?

A Charter or commercial usage, planned flights.

Q With respect, say, to customers from New York taking advantage of the company tour to Albuquerque, do you know how much it cost the customer?

A An estimate was somewhere between 350 and 400.

Q Per couple?

A Yes.

THE COURT: Per couple or for a single person?

THE WITNESS: I believe that was per couple but

I am not sure. I may be giving away bargain rates and not know it.

THE COURT: $400 is an awful lot of money to spend to go to Albuquerque alone.

Go ahead.

Q What was the purpose of these tours?

A The purpose was to solidify the sales and to make available additional purchases to the home site owners.

Q Sell additional land to them?

A Yes.

Q Were the tours successful in solidifying sales?

A Yes, they were.

Q Were the tours successful in selling home site owners additional land?

A Yes, they were.

Q Did you have any conversations with any AMREP officers concerning the success of the tours when you were vice president of sales?

A There were conversations regarding the success of that program, yes.

Q Who did you have conversations with?

A It would have been probably all of the officers.

Q Can you name them, please?

A Mr. Friedman, Howard Friedman, Mr. Carity, Mr. Dan Friedman.

Q Any others?

A In a passing way maybe Hank Hoffman.

Q Mr. Zaknich, were you familiar with a special dinner party in which only Rio Rancho lot owners and their guests were invited?

A That was for home site owner parties.

Q Were those parties held on any particular day of the week?

A They were generally held on a weekend.

Q How did those dinner parties compare with the regular week night dinner parties in terms of format and content?

A Fundamentally the same.

Q What was the purpose of the HSO dinner parties?

A The home site owners were used as a lead acquiring source. They would bring their friends to these dinner parties.

Q Was land sold to the leads brought to those dinner parties?

A To whom?

Q To the leads brought to the dinner parties.

A Yes, they were.

Q Was additional land sold to the people who already owned land at Rio Rancho?

A When possible, yes.

Q Were those HSO dinner parties successful?

A They were.

Q Mr. Zaknich, again referring to the tape that we heard this morning, page 10, the bottom of the first full paragraph, I believe we heard the following language this morning, "Yes, ladies and gentlemen, but let me make this one thing very, very clear to you. We are no strangers at building cities. We have just completed and sold over 98 per cent of Rainbow Lakes Estates in Dublin, Florida just outside of Ocala. Our company is no stranger to land development and to building cities."

During the course of your employment with AMREP did you ever visit Rainbow Lakes Estates?

A I did.

Q How many occasions approximately?

A Between three and five times.

MR. FLEMING: I guess we have our objection on this, don't we, your Honor?

THE COURT: Overruled.

Q Was it a completed city?

A No, it was not.

Q Can you describe for us what Rainbow Lakes Estates was?

A It was a development with somewhere between five, six, 700 homes on it. I don't know the exact size of the acreage.

Q Would 13,000 lots refresh your recollection?

A Yes, it would.

THE COURT: Were they half acre lots, acre lots? There is quite a difference.

Q Do you know how big the lots were at Rainbow Lakes?

A I think they were around half acre lots.

Q And the few hundred homes that you saw there were on those half acre --

MR. ARKIN: He said five to 700.

THE COURT: He said five to 700 homes.

Q The five to 700 homes that you saw there were on these same half acre lots?

A Yes.

Q In other words, there were five to 700 homes on 13,000 lots?

MR. ARKIN: Must we have summary questions or summation questions?

THE COURT: That's true. That's argumentative, not factual material.

Q Mr. Zaknich, to your knowledge, which of the AMREP corporate officers attended sales dinners?

A At what point in time?

Q At any time during the four years that you worked at AMREP.

THE COURT: Look, if you are talking about when he headed up the St. Louis office he can only tell you who may have come out there while he was there.

MR. KAUFMAN: Or who may have told him he did go to dinners, your Honor.

THE COURT: All right.

Would it be easier for you to break it down between being head of the St. Louis office --

THE WITNESS: I think it would really complicate it very much, your Honor. I do know that on an occasion I heard mention of a dinner party that the principals attended but we are talking about virtually the first one or the first ten. I wasn't even with the company at that time.

There were other occasions that I understand that prior to my even coming to the company, a visit to St. Louis --

THE COURT: We are not worried about prior to your ever going to the company.

Q What I am asking you is, to your knowledge, either were you in attendance or any of the corporate officers telling you, do you know which if any of the corporate officers attended Rio Rancho sales dinners?

A I know that officers attended dinners but I don't know the time.

Q I am not asking the time. I am just talking about during the four years that you were at AMREP.

A I understand they had attended from people like Peter Miller and Len Geller --

MR. FLEMING: Objection.

THE COURT: Sustained.

Q Did you ever have any conversations with any of the defendants here on the subject of their attending dinner parties?

A Yes, I had discussion with Howard, Howard Friedman, who had indicated he had been to a dinner party.

(Continued on next page.)

Q Did you have any conversations with Dan Friedman about dinner parties?

A I had a lot of conversations with him.

THE COURT: We are talking about going to dinner parties.

THE WITNESS: The conversation also that I had with Dan that implied that he had been to a dinner party.

Q How did it imply that?

MR. FLEMING: Objection.

THE COURT: Sustained. The witness took three minutes until he got that answer out. I want the record to show that.

Q Do you recall having conversations with any corporate officer, other than the one you testified by Howard Friedman, that indicated that any of the other corporate officers had attended a dinner party?

A I had conversation with --

MR. GLENDON: I object to the form of the question, your Honor.

THE COURT: Rephrase it.

Q Other than the conversations you have told us about with Howard Friedman do you recall any other conversation with any other corporate officer in which dinner parties were discussed or in which the particular officer indicated that he had been in attendance --

THE COURT: You have two ideas there. I gather you are seeking to find out who went not merely a discussion about dinner parties.

MR. KAUFMAN: That is correct.

THE COURT: Then rephrase your question to limit it to that point only.

Q Can you recall any conversation other than the one you have testified about with any of the defendants on the subject of their having attended a dinner party?

A I had a discussion with Chester [illegible] at some point in time when he indicated that he had been to a dinner party.

Q Do you recall where it was that he indicated he had been to the party?

A It was in the ATC group.

Q What geographical area?

A The New York area.

THE COURT: New York State, isn't it?

THE WITNESS: New York --

THE COURT: Metropolitan New York?

THE WITNESS: It probably goes just beyond those boundaries. It does take in the Island.

THE COURT: All right.

Q Do you recall any other such conversation with any other officer?

A There was a discussion regarding the film and an attendance in a party with Hank but I don't know that he even saw the whole dinner party. I think he attended and I think it related to the film.

Q Hank referring to who?

A Hank Hoffman.

Q When you saw the film, which film are you referring to?

A One of the films, the early film.

Q Did you buy any land at Rio Rancho?

A No, sir, I did not.

MR. KAUFMAN: No further questions, your Honor.

CROSS EXAMINATION

BY MR. FLEMING:

XXXX Q Is it Zaknich?

A That is correct.

Q My name is Fleming and I represent Chester Carity and Dan Friedman.

You were asked about a statement which appeared on the tape this morning and I would reread it, at page 6:

"To the east of us meaning Albuquerque is the Siandia Mountains." You were down at Rio Rancho several times?

A Yes.

Q Were the Siandia Mountains directly to the east of Albuquerque?

A I don't think that I know the compass that well.

Q Were the Siandia Mountains there?

A Yes.

Q Did they abut in Albuquerque?

A Yes.

Q Was there government land on two other sides of Albuquerque?

A Yes.

Q Was it logical to assume -- withdrawn.

Did you know that Albuquerque had a total population of 30,000 people in 1945?

A That was my understanding.

Q And when you were down there in the late sixties, am I correct that the population of Albuquerque -- well, what was the population of Albuquerque in 1968 and '69?

A It was bordering on 300,000.

Q Was it over 300,000?

A In that 300,000 range.

Q Was it logical to assume with the Siandia Mountains on one side and the government reserved land on two other sides that Albuquerque if it continued to grow would grow to the northwest?

MR. KAUFMAN: Objection, your Honor.

THE COURT: You need more detail for that question.

MR. FLEMING: In his opinion.

MR. KAUFMAN: Objection.

THE COURT: Sustained.

Q This same paragraph did state that Rio Rancho had 55,000 acres?

A 50,000 acres, yes.

Q 55,000, according to the transcript.

A It's been a while back.

Q A little over 90 square miles, that is in the transcript, do you recall that?

A Yes.

Q So that was told to anyone who was there who decided that they wanted to purchase land?

A Yes.

Q And this was a transcript of a presentation in 1968?

A Yes, it was.

Q With regard to that tape that was played this morning, did you hear that tape in 1968?

A Not that I recall.

Q Did you review it in New York in 1968?

A No.

Q Do you know if it was reviewed in New York in 1968 to your own knowledge?

A I have no idea.

Q Do you know if any changes were suggested or if no changes were suggested?

A I don't have any idea.

Q Is it correct that you did not hear those tapes for the first time until well after you left the company?

A That is correct.

Q There was a six month refund provision in the contract, is that correct?

A Yes, there was.

Q And that required a visit to the property?

A Yes.

Q And an authorized tour?

A Yes.

Q Did people take advantage of that refund privilege?

A Some did.

Q Am I correct that more than a majority of the purchasers, in fact, went down?

A A great many did.

THE COURT: A great many what? That does not answer the question you started to put and the witness interrupted.

A A great many homesite owners who did visit did get their money back.

THE COURT: A great many homesite visitors did get their money back?

THE WITNESS: A great many homesite owners who visited got their money refunded.

Q That was my next question.

THE COURT: I thought he was ahead of you. Go ahead.

Q Am I correct that more than a majority, more than fifty percent of the couples or individuals, units as they were called, who purchased land in Rio Rancho at dinners took advantage of the six month refund offer and took a trip to Albuquerque, that is my first question.

A That is correct.

Q And went on these authorized tours?

A Yes.

Q My next question: Is it a fact that a portion of those homesite owners, people who signed the contract, having taken the trip then cancelled and got a refund?

A Some of them did, yes.

Q And most of them did not?

A A great percentage maintained their existing purchase and others added to it.

Q Did you ever go on one of those tours?

A Once.

Q Am I correct that the homesite owner or purchaser, if I may call the couple or individual that, saw what they had purchased?

A Yes, they did.

Q And they saw its location in connection with the developed area of Rio Rancho?

A Yes, they did.

Q And they saw its location in connection with Albuquerque city proper?

A That they did.

Q And they saw whatever development there was between Albuquerque City proper and Rio Rancho?

A That is correct.

Q You testified that the visitation or the cancellation privilege -- did you testify that the cancellation privilege was necessary to solidify the purchase?

A Give me that question again. I lost you.

Q Did you testify that the cancellation privilege, the six month cancellation, was necessary to "solidify" the purchase?

THE COURT: I don't understand the question.

THE WITNESS: I don't understand your question.

Q I guess that is why I asked it.

THE COURT: Let's try another one or change this one.

Q When Mr. Kaufman was questioning you as to the purpose of the six month refund privilege, do you recall those questions?

A You will have to refresh my mind.

Q Did you testify that a purpose of the refund visitation privilege, did you testify that a purpose of that privilege was to "solidify" the purchase?

THE COURT: I did not hear such testimony.

THE WITNESS: No, the purpose --

Q You did not?

A No.

Q Was the purpose of the six month cancellation privilege to allow the homesite owner to go down and look at what he purchased?

A That is correct.

Q And decide having seen it whether he wanted it or not?

A That is correct.

Q And measure what he saw against what he had been told he would see at the dinner?

A Yes.

Q And make up his own mind then?

A That is correct.

Q You were questioned about the purchase of an additional 37,000 acres of land in 1969 and 1970; do you recall that?

A I was questioned on that.

Q Am I correct that you personally agreed to purchase that land, that you thought it was a good idea?

A Yes.

Q You were questioned about homesite owner dinners? Did you pay homesite owners money to come to the dinners and to bring guests to the dinners?

A No, sir.

Q Did you send cars out to pick them up and bring them to dinners?

A To bring the homesite owners -- sent cars out? There might be exceptions where that might have happened.

Q I take it then that would be an exception if it did happen?

A That was not the norm.

Q Can you recall any situation where it did happen?

A No.

Q Did you tell the homesite owners what to say to their guests about Rio Rancho?

A No.

Q Did you get them in a room and prepare them or give them a script or tell them to merchandise the property?

A No, we didn't do that.

Q There was testimony about a price increase. Did you know while you were working for AMREP that AMREP was investing millions of dollars into the Rio Rancho property?

A I had no question about that.

Q And was it your understanding that as money was invested into the Rio Rancho property the value as the community developed, the value of the property in the developed community increased?

A Unequivocally, I had no misgivings on that.

Q Is that consistent with your experience in real estate?

A That would have been my consistent experience with the land installment sales business.

Q In other words, as money is invested into land, as property is developed, as people move into it that value of an individual piece of that property increases, isn't that correct?

A That is correct.

Q And am I correct that as the value of the developed area where utilities were available provided a homesite owner wanted to build, as the value of that acreage increased then the value of the acreage which held an exchange right also increased?

A That is correct.

Q And that was precisely because the homesite owner who had, we will say a half acre out away from the developed area --

MR. KAUFMAN: Objection to Mr. Fleming testifying, your Honor.

THE COURT: He is asking the witness whether that is true or not.

MR. KAUFMAN: It sounds more like summation.

THE COURT: The witness can say no when he gets all through.

Overruled.

Q That is precisely because the homesite owner, taking one that owns a half acre out away from the developed area has with that half acre the right, the contractual right, to exchange for acreage in the developed area, isn't that right?

A That is correct.

Q And therefore if the price of what he can get for his off-site property rises because of investment then the value of his off-site property also rises?

A That is right.

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Q Because he can exchange, is that right?

A That's right.

Q Isn't that what was the basis of the price increases at AMREP?

A That was my understanding.

Q As they invested more money, the value went up, is that rigth?

A Yes.

Q And as more people moved out there?

A Yes.

Q Does that accord with your experience in real estate?

A Yes, it does.

MR. FLEMING: May I have the manual, please, the black book?

Q Mr. Zaknich, let me showyou Government's Exhibit 1200.

By the way, Mr. Zaknich, if you know, was Corrales Heights called a luxury area of Rio Rancho?

A My feeling was that it was a totally different area in Rio Rancho.

Q There had been an additional investment by AMREP into that particular area than into Unit 16?

A That is my understanding.

Q Am I correct also that the homesite owner, when he purchased we will say a half an acre, that the offering circulars told him what he was buying was the right to utilities only and roads by Sandoval County standards?

A Yes.

Q The utilities --

THE COURT: I am lost here. When the homesite owner bought the property at a dinner presentation he was told that all he was getting was a right to utilities plus paving according to Sandoval?

MR. FLEMING: In the offering circulars, yes, your Honor. In the written documentation.

Q Is that correct?

A Yes.

Q The offering statement.

By the way, that offering statement, do you know what the number NYA means?

A New York approval.

Q The offering statement I am talking about had been submitted, if we were in New York, for example, to the authorities in New York State?

A It would have been.

Q When you were in charge did you ever use materials at a dinner or authorize the use of materials at a dinner which hadnot been submitted to the proper and appropriate state agency, whether it be New York or elsewhere?

A I don't believe I did.

Q Now, you know Dan Friedman, of course you testified about him?

A I do.

Q Was it your opinion he was engaged in fraud while you were at the company?

A No, sir.

Q When you joined the company he was the controller, is that correct?

A Yes, he was.

Q Am I correct that you testified about contacts you had with Dan Friedman, am I correct that your contacts with Dan Friedman had principally to do with administration and costs and matters of that sort?

A That's correct, but it went beyond that from a personal point of view, too. We were very personally involved. We were very close friends.

Q I understand. I don't know, but I am saying, put that aside, talking about just the business relationship.

A Yes.

Q He was the controller -- am I correct that your principal contact with Mr. Daniel Friedman, your principal contact, was with regard to things having to do with costs and administration and so forth?

A That's correct.

Q That was in connection with the sales dinners also?

A That's correct.

Q The cost of the sales dinner, is that right?

A That's correct.

Q How much you should pay for the dinners, I mean the food?

A Financial aspects, the cost of things as they related to the dinner parties, the cost of office operation, that type of thing.

Q Now, you testified -- I want to get back to Exhibit 1200 -- would you open it, please.

(Witness complies)

Q Now, the first document in there, am I correct, is in very large letters and it is captioned "Presentation"?

A That is correct.

Q It is in the nature of a script for a sales dinner, is that correct?

A That it is.

Q If I could read the first paragraph to you, "Good evening, ladies and gentlemen: My name is Blank and on behalf of American Realty and Petroleum, the developer of Rio Rancho Estates, and the HCF Realty Corp., your local representative, welcome."

Now, where was HCF Realty Corp. located?

A In Maryland.

Q Did you, in fact, organize HCF Realty Corp.?

A Did I? I don't think so, no.

Q Do you know whether it was organized before or after you became employed?

A During the time or in that early period that I came to work for the company.

Q Was it organized after you came to New York and had your visit with Dan Friedman and Mr. Mandel that you testified about?

A Was it after that period of time?

Yes, it was.

Q Then, looking at this script and noting that its paragraphs says that you are welcomed on behalf of American Realty and Petroleum and HCF Realty Corporation, would it refresh your recollection that you received this script when you received the manual or after you received the manual?

A Probably after the manual.

Q There is no question you received what you have referred to as the manual from Dan Friedman, isn't that right?

A From two people.

Q Dan and Mr. Mandel?

A Right.

Q That was in New York when you came to New York for your week-long session?

A Correct.

Q Now is it your best recollection that you received the script and inserted it in the binder sometime after that?

A That's correct. I think I stated that yesterday that there was some added materials to the manual. I don't know what they would have been.

Q I understand, I am just trying to be as specific as I can with regard to each of these.

You testified yesterday that you could not recall from precisely whom you had received the script, is that correct?

A I don't recall who I received that from.

Q Now, the next document is something from the Congressional Record dated September 9, 1968, and of course that was well after you had had the week meeting in New York when you came to work for AMREP?

A Correct.

Q So that would be -- that was not in that binder or received by you when you were in New York with Dan Friedman?

A That is correct.

Q Now, there follows that a series of several pages captioned "General Facts on Albuquerque, Company Facts," et cetera.

It is not captioned et cetera, but then there are other pages, it seems to be ten or eleven in all.

A That is right.

Q Do you have any recollection whether you received those particular pages or if you prepared them yourself?

A I didn't prepare these, no.

Q Do you have any recollection as to when you received those particular pages?

A No, I don't.

Q Or from whom?

A No, I don't.

Q Then there is a memorandum, dated February 7, 1968 from Phil Cohen to all brokers, is that correct?

A Where are you?

Q I am sorry, it is after the pages to which I have just referred.

A February 12th?

Q February 7th, the page before February 12th?

A Yes, it is in here.

Q Of course by its date that would have been received by you after your visit in New York when you first came to work with AMREP?

A That's correct.

Q And added to that binder?

A Correct.

Q The same would be true of a February 12, 1968 memorandum of three pages or two and a quarter pages, which immediately follows?

A Yes.

Q Then we come to something the first page of which is captioned "Table of Contents".

A Yes.

Q Is that, in fact, the manual specifically that you were talking about yesterday that you received in New York, that is what follows?

A Yes, it is.

Q This is what you received from Dan Friedman and Mr. Mandel to your recollection?

A This is correct.

Q This sets forth company directions -- directive

A Pardon me?

Q This sets forth, meaning the table of contents, the company directives with regard to any number of things.

A I still do not hear you.

Q I am sorry.

Beginning with the page captioned "Table of Contents" through a last document bearing caption "RMT Realty Corp.", which is an exhibit or a form, these pages constitute the company manual.

A Yes, they do.

Q The company manual sets forth company procedures?

A Yes,it does.

Q To be used in running an office?

A Yes.

Q This is what you were going to do, you were going to run the St. Louis office?

A Correct.

Q If I can just spend a little time with you on it, it has a page on office furniture, it should be the second page in from the table of contents.

A Okay.

Q Is that correct?

A Yes.

Q One sales manager's office desk and chair at $200 new, two chairs at $10 each, two-drawer legal file with lock, $45, is that right?

A Right.

Q Two reception room desk and chair, $300 new, two chairs at $10, electric typewriter IBM at $500 to be paid cash, is that correct?

A Yes.

Q And then it continues as to how you are to furnish your office.

A Yes.

Q And the prices you are to pay for the furniture?

A Yes.

Q Then there are directions on the office lease, is that correct?

A Yes.

end t

Q The office to be located outside of high rent districts?

A I know that it is in here.

Q Now, there is also a direction on hiring salesmen, is that correct?

A Yes, there is.

Q Paragraph number 4, all salesmen must be licensed and must sign employment contract supplied by New York office, is that correct?

A Yes.

Q Number 6, he should read every piece of literature in the office and be completely familiar with it?

A Correct.

Q And other requirements. Secretarial help, they tell you how much you can pay your secretary and how long she's supposed to work?

A You can't do it today, but that's correct.

Q Then we have sales manager duties. Pre-opening, rent space and supply exact address to New York office.

Obtain telephone and supply exact number to New York office.

So this document tells you exactly how to set up your office according to AMREP procedure, isn't that right?

A Yes, sir.

Q That's what Dan Friedman gave you?

A Yes.

Q What prices to pay and what prices not to pay, is that correct?

A Yes.

Q Then it talks about selecting and booking restaurants for the dinners, am I correct?

A Yes.

Q It says, for example, look for a popular priced, well known restaurant, one which is too plush as well as the typical neighborhood bar is to be avoided. Private rooms must be booked.

Now, it also provides for lighting, do you find that under "selecting and booking restaurants," it is the third page?

A Yes.

Q It reads -- am I correct it reads in 1968 or '67:

"Room must have adequate lighting. People must be able to read literature, contracts, et cetera. Note: Check and test lighting."

Is that correct?

A Yes.

Q That was a firm company direction?

A Yes, it was.

Q There are restaurant guides and there is dinner reception procedure, that's also spelled out in here, is it not?

A As far as the restaurant guide, yes.

Dinner reception procedure, yes.

Q It tells you what time the salesmen are to arrive?

A Yes, it does.

Q It tells you literature on the table?

A Yes.

Q It tells you the fewer pieces of literature on the table the better, isn't that right?

?

A That's correct.

Q Recommended literature "This is My Land, New York Times reprint, fact sheet, public report or offering statement," isn't that right?

A Yes.

MR. FLEMING: May I have this marked, please.

XXX

(Defendant Chester Carity and Daniel Friedman Exhibit W marked for identification.)

Q Would you look at W for identification, Mr. Zaknich, and tell me if you can identify it.

A I can.

Q I am sorry?

A I can.

Q Is that a memorandum which you prepared and directed?

A Yes, it is.

MR. FLEMING: I offer it, your Honor.

MR. KAUFMAN: Your Honor, may we have a side bar?

THE COURT: Yes.

(At the side bar.)

THE COURT: Yes?

MS. HYNES: Your Honor, with respect to the Defendant's Exhibit W, I can represent to the court that I have not seen this document in terms of having it turned over pursuant to grand jury subpoena.

I would like a representation from counsel that it was, in fact, turned over and some idea as to when it was turned over.

MR. FLEMING: I don't know, your Honor.

THE COURT: Where did you get it?

MR. FLEMING: I guess in our files. Elliot Lauer gave it to me as a copy of a document that we have in preparation for the case. That's all I know about it.

Do you know, Stanley.

MR. ARKIN: I think Ms. Dacey may have a better insight into it than I do.

MS. HYNES: Is that something that was turned over in the grand jury?

MS. DACEY: I don't know if it was turned over in the grand jury, but I don't know if it was called for.

MS. HYNES: I can produce grand jury subpoenas that we called for this document being turned over. Ms. Dacey says it was not turned over pursuant to a grand jury subpoena, then I would object to its coming into evidence and, furthermore, I do not know that it has been produced by the defendants for discovery.

MS. DACEY: Last weekend it was ready to be tendered. I am not sure John saw it last week, but you may have seen it last week.

MR. ARKIN: Let the Judge read it.

THE COURT: Objection overruled.

(In open court.)

THE COURT: Received.

XXX (Defendant Chester Carity and Daniel Friedman Exhibit W received in evidence.)

BY MR. FLEMING:

Q This manual that you received goes on with procedures to be employed in seating the dinner and showing the films, et cetera, is that right?

A Yes, it does.

Q And then it tells you to sign the restaurant bill, all of the administrative details having to do with dinner, is that correct?

A Correct.

Q It also provides for the method in which contracts, executed contracts for the purchase of Rio Rancho land are to be processed, is that correct?

A It does.

Q And there is also a portion caAtioned "home site owners servicing." Do you have that?

A I am looking for it.

Q There are no page numbers on it.

A Here it is.

Q I direct your attention to paragraph 3 "Where customer wishes to cancel other than under the terms of the contract and your efforts are unsuccessful."

I take it that means your efforts to persuade him not to cancel, is that correct?

A That's correct.

Q "Since you are the broker and not the developer, you cannot offer him a refund. Advise him that his request must be made in writing and forwarded to Albuquerque. If you wish customer to get refund let us know why." That was the direction?

A Yes, it was.

Q Did customers from time to time get refunds?

A Yes, they did.

Q Even though they had signed a contract and had no right under the contract for a refund?

A That's true.

Q In 1969 the United States Housing and Urban Development Agency put in a requirement that a person who purchased land would have to have 48 hours with the HUD circular before the contract could become effective, isn't that right?

A Yes.

Q As a matter of practice, did they give them the HUD document at the dinner which effectively gave the customer 48 hours to cancel after the dinner?

A That's correct.

Q So that beginning in April of 1969 and thereafter the customer in connection with the Rio Rancho purchase had at least 48 hours to cancel after the dinner was over?

A That's right.

Q Now, directing your attention to the period before April, 1969 and before this 48 hour requirement became a matter of law, am I correct that customers -- withdraw that -- individuals or consumers who had purchased land at a dinner and written a down payment check from time to time such people stopped payment on those checks?

A That happened.

Q That worked an effective cancellation?

A True.

Q Am I correct that AMREP, even though it had a signed contract, never attempted to enforce that contract where a purchaser stopped payment on a check?

A That's true.

Q And in addition am I correct that prior to 1969 upon appropriate request AMREP from time to time would allow customers to cancel their contract?

A Yes.

Q And refund their money?

A Yes.

Q And that after 1969, April of 1969, of course, the customer had at least 48 hours after the dinner to call the broker or AMREP and say, I don't want to do it?

A Correct.

Q As a practical matter, because of the way the contracts were processed, am I correct that he had a week or more because it went down to Rio Rancho and back up to the customer?

A There was a long time delay.

Q There's a page in this manual called "communication" and it is talking about communicating with the many offices of Rio Rancho, is that right?

A Yes, it is.

Q And one of the main offices, of course, is AMREP in New York?

A Correct.

Q It lists four persons with their responsibility, is that right?

A Yes, it does.

Q The executive vice president in charge of sales, Chester Carity?

A Affirmed.

Q Treasurer finance, Howard Friedman?

A Correct.

Q Controller in charge of broker payments, Daniel Friedman?

A Correct.

Q Marketing supervisor in charge of party operations, Howard Mandel?

A Correct.

Q Am I correct that Dan Friedman's responsibility with regard to the parties was a financial responsibility?

A Yes, it was.

Q And Mr. Mandel's responsibility had to do with operation of the party itself?

A This is correct.

THE COURT: We will have a short recess.

(Recess.)

(Continued on next page.)

(In open court - jury present.)

Q Back to the book, Mr. Zaknich, please, for a moment.

We were in an area called home site owners servicing. I am willing to work off this which would be quicker, your Honor, if there is no disagreement that it's an exact copy.

MS. HYNES: We haven't seen it.

MR. KAUFMAN: We will accept Mr. Fleming's representation.

Q It will be quicker this way.

Turning forward or turning towards the back of the copy of the manual that I have from the page captioned home site owners servicing, there is a page which bears Roman numberal VI acknowledgment and it says paragraph numbered 1, the day after the sale the home site owner should be called and welcomed to the family of Rio Racho property owners. He should be told his contract is on its way to Rio Rancho Estates and at this time you can also answer any additional questions he may have to ask.

Was that company policy back in 1968?

A Yes, it was.

Q Did it continue while you were at the company, to your knowledge?

A Yes, it did.

Q So that the very day after the dinner anyone or any couple who had signed a contract to purchase land was actually called by a Rio Rancho broker or representative, is that right?

A Yes, he was.

Q And answer any additional questions the home site owner might have?

A Yes.

Q I take it during that telephone conversation on occasion did home site owners say they had changed their mind, to your knowledge?

A Yes, there were occasions where they had changed their minds.

Q On at least some of those occasions were they allowed to cancel?

A Yes.

Q There are then attached to this manual a series of exhibits which are really forms, is that correct, that are to be used in a Rio Rancho brokerage owned and operated agency?

A In an owned and operated office, ys.

Q That's what St. Louis was?

A Yes, it was.

Q For example, one of them is a vacation travel allowance form, is that correct?

A Correct.

Q And that provides for the issuance of a certain number of dollars vacation travel allowance?

A Yes, it does.

Q And it's a rider to be attached to a sales contract when one is executed?

A Correct.

Q It provides this allowance is being issued in accordance with your six month inspection privilege and will only be granted provided a registered inspection is made within six months of the date of the agreement?

A Correct.

Q And that has to do with the going out and visiting the property and determining whether you want to keep it or not?

A Yes, it does.

THE COURT: Wait. How does that tie up with who pays for the tour?

In other words, you said before that if a person wanted to go to Rio Rancho within the six month period that AMREP arranged for their transportation on airplanes at a lower cost than would be normal but that the purchaser had to pay for it?

THE WITNESS: That's correct.

THE COURT: Did this allowance go to that cost to buy the ticket or did it go to some other cost?

THE WITNESS: There was an allowance given to the home site owner who visited from one to $200 predicated on the amount of his purchase and at the time he visited that 100 or $200 was applied as a credit on the back end of the purchase of that contract.

THE COURT: So the person who went on the tour paid for the ticket?

THE WITNESS: Yes, he did.

THE COURT: He paid for his lodgings and food?

THE WITNESS: There were a lot of complementary things done for him when he was down there. I don't know the specific breakdown.

THE COURT: But this was merely a credit? If he came down they credited your purchase price for this amount to be credited at the end of the payment period?

THE WITNESS: Correct.

THE COURT: That's what I think Mrs. Henry testified to.

MR. FLEMING: It's the next paragraph.

Q This allowance is to be used to pay the last installment falling due under the agreement and for no other purpose, is that correct, that's the way it worked?

A Gee, I am glad my memory factor worked that well.

Q If I might, your Honor, if the home site owner took the trip to Albuquerque the couple paid their own plane fare themselves?

A That's correct. They were either charter flights or there were group rates arranged for them by the individual offices.

Q And if they got there and looked at it and kept their property this vacation trip allowance was applied against the purchase price of the property at the end of the payments?

A That's correct.

Q And that would be 100 or $200 depending upon the size of the purchase?

A As I recall, that's correct.

Q Here is another exhibit. Am I correct it's an exhibit -- I can't read the number.

A Exhibit 1 -- I don't know what exhibit it is.

Q It has columns "number, acre, size, allocation, unit, block, lot, price, multiple discount," et cetera. What does that represent? What is that a sample of?

A This is a sample of the inventory sheet which in the industry was called an allocation sheet.

Q Is this what went to an office for a dinner?

A Each individual office made their own allocation sheets predicated on an overall inventory that they were allotted from the allocations department at Rio Rancho.

Q This is the form that was to be used as a matter of company policy, is that correct?

A Yes, it was.

Q And it mentions the price of the particular acreage?

A Yes, sir.

Q The multiple discount if it's more than half an acre?

A Correct.

(Continued on next page.)

Q Leaving the price tonight if it is more than half an acre, that is the night of the sale or the dinner, is that right?

A Correct.

Q And the reservation fee, I guess that is the down payment?

A That is the down payment.

Q And the terms and that is monthly?

A Monthly.

Q Then there is a special fifteen percent reservation fee and I take it that was to bring the insurance into effect which was described on the tape recording?

A Correct.

Q Do you recall how that insurance worked and if so would you describe it?

A As I recall up to the age of sixty if the purchaser of land had a down payment of fifteen percent he was entitled to coverage on that parcel to the extent of the balance due on that parcel in the event of death.

Q So that shorthanded, if the breadwinner, so to speak, died, the property would vest with no further payments?

A Correct. If he was over sixty then twenty per cent was required.

Q Am I correct there is no space, no column on this authorized document providing for a prediction as to what the property would be worth 10 or 15 years later? There is no space there for that, is there?

A No, sir, there isn't.

Q I take it what's here is company policy and only what is here?

A Correct.

Q There was a discussion about holds, questions about holds?

A Yes.

Q Am I correct or did you testify that at least one purpose of a salesman saying hold was to give him a chance and only him a chance to sell that particular piece of property to someone at his table in order to avoid the possibility of duplicative sales?

A That was one of the purposes.

Q Am I correct that a salesman who took a hold-- on occasion a salesman who took a hold on a particular piece of property at a dinner sometimes held that hold overnight and for a period of time while he talked to the particular prospective customer about it or purchaser about it?

A That was possible if he cleared it through his manager and on occasions it was necessary to do that with the allocations department. That's if it extended over a period of time.

Q Was there any possible way to avoid duplication of sales at the dinners without the use of a hold?

A May I think?

I don't know of any way other than the control from the manager himself in just selecting and handing somebody something and giving it to them if possible.

Q These men were working for commissions, weren't they?

A Yes, they were.

Q I take it that the manager felt an obligation to his salesmen to give them an opportunity to sell land?

A That's correct.

Q I take it if a particular salesman believed that a person he had been talking to had an interest in a particular parcel the manager had an obligation to allow that salesman to try to sell that parcel?

A That's correct.

Q You say you were at Rio Rancho -- I don't recall the exact number but many times during your employment with AMREP?

A I was there on many occasions.

Q Was there a change between Rio Rancho as you first saw it and Rio Rancho as you last saw it?

A Very definitely.

Q It wasn't a desert?

A No, it wasn't.

Q Was it a part of AMREP's business purpose, as you understand it to be, to not only sell homes but to construct homes in the Rio Rancho community?

A Let me follow that again, please.

Q Was it a part of AMREP's general business purpose, as you understand it to be, to sell and construct homes at Rio Rancho?

A That was one of the things.

Q And was it AMREP's intention, as you understand it, to make money and profit on the construction of homes for people moving to Rio Rancho?

A I believe that they did.

Q As a matter of fact, was there a man named Hugh Hood in charge of home sales down at Rio Rancho?

A He was.

Q Was it his policy that if at all possible any home that was to be built at Rio Rancho in the developed area would be built by AMREP Construction?

MR. KAUFMAN: Objection.

THE COURT: Overruled.

A Was it his policy that it would be only AMREP, is that your question?

Q Not only, but if it could be it should be AMREP that would built the home?

A Unequivocally.

Q Sure, to make money.

Is it fair to say AMREP had an interest in Rio Rancho in the construction of homes in Rio Rancho?

A They did.

Q While you were there they set up at least one program to encourage that, did they not, called fly and buy?

A Yes, there was such a program.

Q And they made arrangements with banks to provide mortgage money up to 90 per cent of the cost of a home?

A I don't recall the specifics of the allowances but a great deal of effort and energy was expended in the fly and buy program.

Q And was a great deal of effort and energy expended in attempting to persuade people to come and live in Rio Rancho?

A Yes, there was.

XX

(Defendant Chester Carity and Dan Friedman Exhibits X and Y marked for identification.)

Q Did that include arrangements with banks in Albuquerque for mortgage money and construction loans to persons or couples who decided to move down there and build?

A I would have gotten that secondhand from Hugh Hood but that was my understanding.

Q I show you Dan Friedman and Chester Carity Exhibit X for identification and ask if you recognize that.

A I don't know that I saw this specific one.

(Continued on next page.)

Q Is it similar to or of a kind of documents that you did see when you were there with AMREP?

A Conceptually it is the type of thing that was done.

Q It was to encourage people to come down and live in Rio Rancho?

A Yes.

Q I show you Exhibit Y for identification and ask you the same question.

Can you recognize that either specifically or of a kind with documents you saw while you were employed by AMREP?

A Similar to this one also.

Q Also designed to encourage people to come to Rio Rancho to live?

A Correct.

Q Was it part of the company philosophy, as you understood it to be, that the more people that would come to Rio Rancho to live the more the value of the property at Rio Rancho would appreciate?

MR. KAUFMAN: Objection, your Honor.

THE COURT: Overruled.

A A very basic concept, yes.

Q Basic to the entire Rio Rancho concept, wasn't it?

A Yes.

MR. FLEMING: I offer both of these, if your Honor please, that is. X and Y.

Q To your recollection was Chester Carity or was not Chester Carity especially interested in encouraging people to come down and live in Rio Rancho as a development?

A You are asking me?

Q Yes.

A Yes.

Q Was that one of his principal concerns?

A Very definitely. We had many conversations relating to that.

Q By the way, in all the conversations you had with Chester Carity did you ever have any conversations with him where he talked about defrauding land purchasers?

A No.

Q Or engaging in a land swindle?

A Never.

Q From your many conversations did Chester Carity believe in this project?

MR. KAUFMAN: Objection, your Honor.

THE COURT: Overruled.

A You are talking during my tenture of time?

Q Yes.

A Unequivocally believed in the project.

Q Now, one or two questions on the exchange rates. Dealing with the half acre for half acre exchange rate, assume a couple or a family purchased four acres at Rio Rancho of undeveloped land.

A I am with you so far.

Q Am I correct that under the half acre for half acre exchange rate if they decided to build eight houses, they could build eight houses on half acre lots?

A While that was not in writing, that was something that we felt truly existed.

Q What was in writing in the contract was when you are ready to build, exchange for half an acre, isn't that right?

A Yes.

Q Wasn't there one family that, in fact, bought two or three or four acres and then built four, five or six or eight houses, an Italian family?

A Out of Long Island who owned a pool table company?

Q That's right.

A I understand something like that did take place.

Q Where they bought several acres and then built several homes and brought their whole family down?

A If you are talking about that same family, that was true and it did exist.

Q Now, you were the manager of the St. Louis office for a period of time and that was an owned and operated office, right?

A Correct.

Q You ran dinners?

A Yes.

Q You then became the regional manager?

A Yes.

Q And you supervised men who ran dinners?

A Yes.

Q And you went to dinners yourself?

A Yes.

Q You went to a lot of them?

A Yes.

Q You then became national sales manager here in New York?

A Correct. Not in New York. I was national sales manager.

Q I thought you were in New York. Were you located in New York then as national sales manager?

A I was but I still traveled in the field quite extensively. I came into New York with great frequency, but I traveled throughout the nation.

Q Then you were vice president in charge of sales?

A Correct.

Q Were you then in New York or still traveling?

A I traveled considerably then, too, yes.

Q Did a lot of your traveling have to do with policing the activities of the various branch offices in their selling technique?

A Principally throughout my career with AMREP that was one of the functions.

Q Was it your consistent policy to insist upon truthfulness on the part of the salesmen?

A I would like to believe that.

Q Do your best.

A Pardon me?

Q Did you do your best to do that?

A I believe I did.

Q Did you consider satisfied customers an economic benefit to Rio Rancho in its development?

A I certainly did.

Q Do you remember a man named Luther Schlesser?

A I sure do.

Q Could you tell us about Luther Schlesser?

A His name is Schlesser.

Q Did something happen in 1969 or 1970, is that right?

A I don't recall -- I think you are a little -- I think it was earlier than that.

Luther Schlesser was brought in to the St. Louis office by one of the managers. He was hired and had gone out and sold property predicated on a price increase that was forthcoming. Did documentation of some sort to the extent that prices were going to be increased on the property and went out and sold existing home site owners a great quantity of land on the basis that they would not even have to make payments.

We didn't know this. These were the after effects. When it was finally brought to our attention through screening and discovering that this, in fact, did take place, every one of Schlesser's customers were personally contacted by Harry Arthur, at that time a regional director -- I guess you are right on the time, it was in '69 -- and moneys were either refunded or in some way, shape or form total customer satisfaction was certainly the thing that took place.

The home office was aware of it. We were considerably upset. Dan Friedman and I personally spent time on it and to the best of my knowledge the matter was cleared up.

Q Was the same true when you had customer complaints about salesmen that you were able to verify?

A Yes.

Q That was your policy?

A Yes.

Q AMREP's policy?

A Yes.

Q Dan Friedman's policy so far as he was responsible for it?

A Yes.

Q Chester Carity's?

A Yes.

MR. KAUFMAN: Your Honor, I believe Mr. Fleming has an offer pending and we have no objection.

MR. FLEMING: I would like to mark this.

XXX (Defendant Chester Carity and Daniel Friedman Exhibits X and Y received in evidence.)

XXX (Defendant Chester Carity and Daniel Friedman Exhibits Z and AA marked for identification.)

Q Mr. Zaknich, let me show you Z for identification and ask you if you recognize that, I guess, as an official

AMREP document.

A Yes.

Q I would ask you the same question with regard to double A for identification.

A You don't mind if I read the second page?

Q Not at all.

A I wrote that, yes.

MR. KAUFMAN: I can't hear the witness, your Honor.

THE COURT: He wrote that, yes.

Q Both of these documents, to your knowledge --

A This one I wrote.

Q Did both documents, to your knowledge, represent company policy at the time you were at AMREP?

A Yes.

MR. FLEMING: I offer them.

Q Can you approximate how many sales dinners --

MR. KAUFMAN: Your Honor, if we may just have a chance to review the documents without Mr. Fleming asking a question.

THE COURT: All right.

(Pause.)

MR. KAUFMAN: If I may just have one question on the voir dire on Z, your Honor.

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. KAUFMAN:

Q On the memo to all managers from Ira Kellman involving new contracts, do you recall receiving this memo yourself?

A Yes.

MR. KAUFMAN: No objection, your Honor.

No objection on double A.

XXX (Defendant Chester Carity and Daniel Friedman Exhibits Z and AA received in evidence.)

BY MR. FLEMING:

Q Can you approximate, Mr. Zaknich, how many sales dinners were held in the year 1969?

MR. FLEMING: I am sorry.

THE COURT: You can go ahead.

A About 10 or 12,000.

Q 10 or 12,000?

A My analogy is approximately 50 of them times five a week, whichwould be 250 a week times 50 weeks and you are close to 10 or 12,000 parties.

Q How many salesmen at the average dinner aside from the manager, I am talking about the salesmen.

A Oh, I think a good average would probably be throughout the country would be around five and a half, round it out to about six.

Q At each one of those dinners. Of course they would be the same salesmen at some of the dinners?

A Yes.

Q How many salesmen did AMREP employ nationally? Do you have any idea in 1969?

A In the area of five to 700, 800.

MR. FLEMING: I don't think I have any more questions, your Honor, if I might read these documents to the jury.

THE COURT: You read that one and I will read this one.

MR. FLEMING: I am sorry, I thought you had finished.

THE COURT: Go ahead, you can read it.

(Mr. Fleming read from Defendant Chester Carity and Daniel Friedman Exhibit Y in evidence to the jury.)

(Mr. Fleming read from Defendant Chester Carity and Daniel Friedman Exhibit X in evidence to the jury.)

BY MR. FLEMING:

Q That was to encourage people to come down and build homes, was it not?

A Yes, it was.

(Mr. Fleming read from Defendant Chester Carity and Daniel Friedman Exhibit Z in evidence to the jury.)

(Mr. Fleming read from Defendant Chester Carity and Daniel Friedman Exhibit AA in evidence to the jury.)

BY MR. FLEMING:

Q Ticket means license?

A Correct.

Q AMREP policy?

A Yes.

(Mr. Fleming read from Defendant Chester Carity and Daniel Friedman Exhibit W in evidence to the jury.)

BY MR. FLEMING:

Q Was that company policy?

A Yes, it was.

MR. FLEMING: I have nothing further, your Honor.

MR. ARKIN: No cross, your Honor.

THE COURT: Anybody else?

Any redirect?

MR. KAUFMAN: Yes, your Honor.

THE COURT: All right.

XXX REDIRECT EXAMINATION

BY MR. KAUFMAN:

Q Mr. Zaknich, I show you what has been marked Government Exhibit 789 for identification and ask if you can identify that.

A I can.

Q Excuse me?

A I can.

Q In general terms what is that?

A It is an offering statement, Rio Rancho Estates.

Q Is this an offering statement that was the subject of the memo that Mr. Fleming just read?

A It would have been this type of thing, yes, with the dates and so forth. Yes, it would have been on an offering statement.

MR. KAUFMAN: The government offers 789, your Honor.

MR. ARKIN: No objection. There seems to be a loose page in here. Is that part of the exhibit, Mr. Kaufman?

MR. KAUFMAN: I believe so. We can staple it in if it is all right with defense counsel.

MR. ARKIN: If you represent that it came with this circular, you may indeed to that.

XX (Government's Exhibit 789 received in evidence.)

Q Mr. Zaknich, this memo talks about directing federal property reports and individual state offering statements at the dinner party, right?

A Yes, it does.

Q This would be an example of a state offering statement, right?

A Yes.

Q For New York State it would be this one, right?

A Correct.

Q This was an additional federal property report that was also directed, is that right?

A Yes.

Q Your memo says it is the policy of AMREP Corporation to make sure that there is a meaningful delivery with sufficient time for the customer to read these reports, is that right?

A Yes, it does.

Q You have testified that the dinner party presentation was a rigidly structured presentation in terms of time and what happened when, is that correct?

A Correct.

MR. FLEMING: Object to the characterization.

THE COURT: Overruled.

Q And that the manual you received from Dan Friedman and Howard Mandel set forth what was to happen at the dinner party, is that correct?

A It outlined it, yes, sir.

Q You recall hearing that tape here this morning of an actual dinner party this morning, is that right?

A I did.

Q Do you recall hearing on that tape on any occasion when the speaker said, let's take a few minutes out and all people read these reports? Did that happen on the tape?

A No, sir, it did not.

MR. ARKIN: Your Honor, is this proper redirect?

THE COURT: No, it is not.

MR. ARKIN: I therefore object.

THE COURT: Sustained.

MR. KAUFMAN: Excuse me, your Honor, the witness has testified --

THE COURT: The record speaks for itself.

Q Mr. Zaknich, approximately how long would it take to read this report?

MR. ARKIN: Objection, if your Honor please.

THE COURT: Overruled.

MR. ARKIN: How long to take whom to read it?

THE COURT: Anybody. How long would it take Mr. Zaknich?

A It would take about 30 minutes.

Q 30 minutes and how long would it take to read the accompanying federal property report?

MR. ARKIN: Again I object, your Honor.

THE COURT: I don't know what you are comparing it to. Your tape stopped with a statement of a lot of background talk.

MR. KAUFMAN: I will get to that, your Honor. I will cover it successfully.

THE COURT: Okay.

Q About how long would it take to read the accompanying federal property report?

A About another 30 minutes.

Q A total of about an hour then to read the two reports, is that correct?

A Depending upon the speed of the individual. It would take me about that long.

Q From the tape that we heard this morning I would assume that you would be in agreement that there was not an hour set aside during that portion of what we heard for customers to read --

THE COURT: Wait, wait. That's not the representation of that tape, Mr. Kaufman.

The meeting went on.

MR. KAUFMAN: I will ask that as the next question, your Honor.

THE COURT: What you have just asked is improper. Then put the one you think is right.

(Pause.)

(Continued on next page.

Q Mr. Zaknich --

THE COURT: As I understand from listening to that tape any reading of these reports would occur after your tape ended, after your transcript ended.

Q The tape ended with the calling of the hold, is that correct?

A Yes, it did.

Q At the dinner parties that you attended what happened after the calling of holds?

A The selling people made every effort to close the prospect and make him a home site owner.

Q How did he close the prospect, how did he try to close the prospect?

A He did it by filling out the contract and discussing the specific location, the specific allocation that he had.

Q When you say filled out the contract did he just automatically start filling out the contract despite the fact or whether or not the customer had indicated a willingness to buy?

A If the customer objected he would certainly not go ahead. He would certaily establish the rapport where he could in fact do that.

Q Do you know if it was company policy to have the salesman immediately start to fill out the report?

A At the conclusion --

Q Excuse me, the contract.

A At the conclusion of the presentation it was.

Q Reading from a part of the manual that says dinner reception procedure, the fifth page at the top, filling out contract. Nothing happens until the sale is made. After you have discussed hold explain to customer that you are going to put everything down on paper so that he can see how it looks. Fill out contract. Is that company procedure?

A Yes.

Q I gather at this time the salesman is trying to make the sale, is that right?

A Correct.

Q Was this the time when objections were usually received from the customer?

A Yes, they were.

Q And were there usuallyobjections that were received from customers? That is,common objections?

A There were certain ones that were common.

Q Were sales people trained as to what these common objections were and how to handle them?

A Yes, they were.

MR. ARKIN: This is beyond the scope of redirect.

THE COURT: Overruled. He was taken through very carefully through the manual and compliance with the manual.

Q Does this manual contain instructions as to what the common objectives were?

A It outlined them.

Q Were salesmen instructed that after you answer the last objection close the sale?

A That was the way -- the analogy was to determine what the objections were in totality, not to play there with an individual objection then get another one and another one and another one. It was to ascertain what really was the objections,all of them.

Q Get all the objections out and then answer them?

A To the best of their ability to do that, yes. So that they could go back to the closing of the contract.

Q About how much time would be set aside for a salesman to close a sale?

A We like to schedule them in about 10 minutes. That wasn't the case but that was what we established as the time for them to close that contract.

Q The offering statement and the federal property reports then could not be read within those ten minutes, is that correct?

A Within that period of time, no, sir,

Q After the ten minutes was there a procedure that was company policy that was followed in order to try to make the sale if the salesman was unsuccessful?

A Now can I ask you about what time you are talking about?

Q You mean what time during your employment?

A Because the offering statement --

Q Withdrawn.

If a salesman were unsuccessful in closing the contract after ten minutes, fifteen minutes, was there a procedure followed in order to try to make the sale?

A Yes, there was.

Q What procedure was that?

A That was known as the turnover procedure which was referred to as the TO.

Q Turnover or takeover?

A Takeover.

Q What was the takeover?

A The takeover was another face on the scene. It might be another sales associate, it might be the broker or it might even be the manager of the branch. He would sit down and make an attempt at closing that prospect and making him a home site owner.

Q Using what type of persuasion? What things were said?

A Hopefully very smart sell, getting the objections out and closing.

Q How long would the person involved in the TO take to try to close the contract?

A There was no time. If it was the branch manager there was no time. That would go on. I wouldn't even begin to say, 30, 40 minutes, an hour, an hour and a half.

Q The individual involved in the takeover didn't refer the customer to the property reports and offering statements and attempt to close the sale, did he?

A If a question that could be answered by either one of those pieces of material were corrected he would certainly refer to it.

Q That's not the question. The question is did the person involved in the takeover affirmatively give those reports to the customer and say, "Read these" as part of the takeover?

A No.

Q If the person involved in the takeover were unsuccessful in closing the contract, was that it? Was that the end of the sales effort?

A At that particular time it would be.

Q The customer left, is that right?

A Yes.

Q When did the customer read the property reports? When did the customer read the offering statements? You testified --

THE COURT: Wait. You put a question to him, let him answer it.

A He became a home site owner.

Q I see. So unless a customer purchased he did not read the offering statements or property reports, is that correct?

MR. FLEMING: I object to that. He can't say that.

THE COURT: It seems to be from the witness' answer, that would be true.

A That would be the pattern at the party.

THE COURT: The pattern at the party would be that you first sign the customer up to the contract and then he would read the reports?

THE WITNESS: Yes.

Q In other words, what you are saying is that this memo only pertained to people who actually signed contracts who thereafter would have an opportunity to read the reports, is that correct?

A Yes.

Q Just referring to people who actually signed contracts, when you talk about meaningful delivery and time to read the reports are you saying that the HSO, the person who signed the contract, was told to sit down and spend an hour and read these reports there in the restaurant?

A He was told to read those and on occasions he may well have read those in the restaurant. There were other occasions that he would take --

THE COURT: Keep your hand down. You are blocking your mouth from the jury.

A -- he would take those home, he or she, both of them, and read them at home.

Q Was the HSO given anything else besides the property reports and offering statement to take home?

A A copy of the signed contract.

Q Anything else?

A Various other riders as they applied to travel allowance and whatever.

Q Did you ever hear the phrase lit. pack?

A Literature pack, yes.

Q What was the lit. pack?

A The quantity of literature that was given to them to take home to read and to also give to other friends and --

Q And the lit. pack was a big envelope with the statement, the contract, the property report and a slew of promotional material in it, correct?

A It contained a number of pieces of literature.

Q And the envelope was turned over to the HSO and sent home, right?

A That's correct.

Q And that was meaningful delivery, right?

MR. ARKIN: Objection, your Honor.

THE COURT: Sustained.

THE COURT: Do you have much more?

MR. KAUFMAN: I believe I would have.

THE COURT: We will have to adjourn until Monday morning at 10:00 then.

(Jury left the courtroom.)

(Trial adjourned to November 15, 1976, at 10:00 a.m.)

***

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Peter Zaknich (Resumed)	1051	1126	1179	

EXHIBIT INDEX

Government	Identification	In Evidence
668-A,669-A	1063	1072,1082
670-A,671-A	1063	
672-A	1063	
671-C, 671-D	1064	1082
673-A,674-A	1064	1082
789·		1180

Defendant Chester Carity and Daniel Friedman	Identification	In Evidence
W	1149	1151
X	1168	1175
Y	1168	1175
Z, AA,	1175	1177

UNITED STATES OF AMERICA

v 76 Cr. 644

AMREP CORPORATION, et al

November 15, 1976
10:00 A.M.

(In open court - jury not present - Ms. Cross and Mr. Devorkin present)

MR. DEVORKIN· This is with me and Ms. cross for the defendants for the purpose of recording the 3500 material.

Either the afternoon of November 11th or the morning of November 12th the defendants were given 3512-A, a letter, dated September 24, 1976, from Allan R. Kaufman to Bert Schuster.

Friday, November 12th they were given 3525-B, a letter dated October 22, 1972, from Lilian Seder.

3523-C, a letter, dated November 16, 1972, from Lillian Seder.

3525-D, questionnaire filled out by Allen and Lillian Seder in 1974.

3525-E, letter, dated January 3, 1973, unsigned by it is from Mr. and Mrs. Seder.

3523-F, letter dated March 21, 1972 from L. Seder.

This morning the defendants were given the grand jury testimony of Allen Seder, 3523-A.

(Trial resumed)

(In open court - jury present)

PETER ZAKNICH, resumed the stand, having been previously sworn, resumed the stand and testified further as follows:

THE COURT: Good morning.

You may proceed.

MR. KAUFMAN: Thank you, your Honor.

REDIRECT EXAMINATION CONTINUED

XXX BY MR. KAUFMAN:

Q Mr. Zaknich, do you recall the following testimony from Mr. Fleming's cross examination reading from page 1132 of the transcript, line 18:

"Q Did you testify that a purpose of the refund visitation privilege -- did you testify that a purpose of that privilege was to 'solidify' the purchase?

"The Witness: No, the purpose --

"Q You did not?

"A No.

"Q Was the purpose of the of the six month cancellation privilege to allow the homesite owner to go down and look at what he purchased?

"A That's correct.

"Q And decide having seen it whether he wanted it or not?

"A That's correct."

Do you recall that testimony on cross examination?

A I do.

Q Do you recall testifying on direct examination, page 1117, line 11:

MR. FLEMING: If your Honor please, I assume if it has been covered on direct examination, it has been offered so I object.

THE COURT: He can point out any inconsistency that he hoped to point out.

MR. FLEMING: The page?

MR. KAUFMAN: 1117, line 11.

Q "Q Did they" referring to AMREP, "conduct any programs for the people who wanted to go" referring to Albuquerque?

"A Yes.

"Q What type of programs?

"A Fly programs.

"Q Charter flights?

"A Charter or commercial usage planned flights."

Continuing on to 1118, line 7:

"Q What was the purpose of these tours?

"A The purpose was to solidify the sales and to make available additional purchases to the homesite owners.

"Q Sell additional land to them?

"A Yes.

"Q Were the tours successful in solidifying sales?

"A Yes, they were."

THE COURT: Wait, you left me on page 1117.

MR. KAUFMAN: Yes, line 17 and then I skipped to 1118, line 7.

Q "Were the tours successful in solidifying sales?

"A Yes, they were.

"Q Were the tours successful in selling homesite owners additional land?

"A Yes, they were."

Do you recall that testimony on direct examination?

A I do.

Q Can you account for the apparent contradiction between your testimony on direct and cross?

MR. ARKIN: Objection, your Honor, as to form.

THE COURT: Reframe your question.

Q Mr. Zaknich, I believe on cross you said it was not the purpose of the tours or the refund privilege to solidify the sales. Yet previously on direct examination you testified that it was the purpose to solidify the sales and also to sell additional land.

Can you tell us now what the purpose of the tours were?

MR. ARKIN: Your Honor, I object to the characterization. The point is the two are not inconsistent.

THE COURT: Give me that page, the cross examination page again.

MR. KAUFMAN: 1132, your Honor, starting on line 18.

(Pause)

THE COURT: I don't think there is any conflict between the two. Objection sustained.

MR. ARKIN: Thank you.

Q Mr. Zaknich, is there any difference between the six month refund privilege and the tours run by the company to bring people down to Albuquerque within the six month period?

MR. ARKIN: Objection, your Honor.

THE COURT: Sustained.

Q Mr. Zaknich, were the company sponsored tours run to enable homesite owners to take advantage of the six month refund privilege?

MR. ARKIN: Objection, your Honor.

THE COURT: Sustained, let's go on to something else.

Q Mr. Zaknich, do you recall being asked on cross examination whether homesite owners were paid to come to dinners and to bring guests and you said they were not paid; do you recall that?

A I recall that.

Q Were you aware of any program that AMREP set up in terms of incentive or bonus or gift programs in the way of having homesite owners produce referrals?

A To the best of my knowledge there was no incentive program other than a half acre certificate incentive, but to the best of my knowledge no one that I know of ever received --

Q What do you mean a half acre certificate?

A It was a program established whereby a homesite owner who would bring ten referrals who, in fact, did become homesite owners would be qualified to receive a half acre in Rio Rancho Estates.

Q Free?

A Yes.

Q Do you recall being asked --

MR. FLEMING: Would it be appropriate to determine whether that ever happened.

THE COURT: The witness said it did not happen.

Q Were you aware of any credit toward payment program producing a certain amount of referrals?

THE COURT: A what?

Q A program with respect to credits against a HSO's payments for producing referrals?

A Not as I recall.

Q Do you recall being asked about the purpose of calling the holds you said one of the purposes was to assure that only one salesman would be discussing a parcel with a customer as well as it being motivational in creating enthusiasm?

A I do.

tla

Q Do you recall Mr. Fleming asking you if there was any possible way other than the use of holds to avoid having more than one salesman trying to sell the same piece of land?

A I do.

Q Are you aware of what the up system was at the dinners?

A Yes, I am.

Q What was the up system?

A It was --

MR. FLEMING: Is this related to cross examination?

MR. KAUFMAN: Yes, your Honor, this relates to the questions about the holds.

THE COURT: It is preliminary to his question on redirect.

Q What was the up system?

A If you had seven salesmen you would number them one to seven and the first salesman would get the first prospect that came in and subsequently the seven would get the seven.

Q This was a rotating system whereby salesmen were assigned to customers on a nightly basis, is that correct?

A That's correct.

Q Could that up system have been utilized in terms of being an alternative system for the holds?

MR. ARKIN: Objection.

THE COURT: Sustained. I suggest we adjourn and go home.

MR. FLEMING: That was Mr. Arkin, your Honor.

(Laughter.)

THE COURT: Reframe your question, Mr. Kaufman.

MR. ARKIN: I made an objection, your Honor. I leave it to your Honor to rule entirely.

THE COURT: I didn't hear the objection. I only heard the ruling.

Do you want the answer read back to you so you know what you are objecting to?

MR. ARKIN: I would like the question read back and I will reframe the objection, your Honor.

(Record read back.)

MR. ARKIN: Your Honor, that calls for speculation and it is irrelevant.

THE COURT: No, he gave a view on cross examination that the only reason you used the hold system was for a purpose. He is now being asked whether something else couldn't be used.

Objection overruled.

Q You can answer, Mr. Zaknich.

A Yes.

Q How could it have been so used?

A By having the branch manager perhaps control all the allocations and assign them.

THE COURT: He said that on cross.

Q Could the branch manager --

THE COURT: He is asking you whether the up system could be used.

Q Utilizing the up system, how could the branch manager have controlled allocations?

A By using an up system for allocation.

Q Physically at the dinner how would it have worked?

A Not having used it, I don't know.

Q Mr. Fleming asked you if you could think of another system --

THE COURT: Wait. You testified on Friday that one way of avoiding the hold system would be to allocate the available property among the salesmen so that no salesman was trying to sell the same property. Right?

THE WITNESS: That's correct.

THE COURT: In other words, if you had seven pieces of property and you had seven salesmen with seven tables, you were allocated each salesman one piece of property so that only that piece of property would be sold at that table, right?

THE WITNESS: Yes, you could do that.

THE COURT: That's what I gather the allocation system would be.

So that the one piece of property to one salesman at one table. The other salesmen at the other tables wouldn't have it available to them?

THE WITNESS: That's correct.

THE COURT: That's what you meant by the alternative to the hold system?

THE WITNESS: That's correct.

THE COURT: All right.

Q Then you recall Mr. Fleming asking you --

THE COURT: Now you have got him on how the up system changed that. I don't see --

MR. KAUFMAN: Your Honor, Mr. Fleming responded --

THE COURT: Wait, you have asked a question of this witness trying to press him to explain how the up system would be different from the allocation system.

Q How would the up system be utilized in terms of having the officer or the branch manager control which lots were being sold by the particular salesman?

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